



POLICE DEPARTMENT

August 24, 2009

MEMORANDUM FOR: Police Commissioner

Re: Sergeant Curtis Oates  
Tax Registry No. 898193  
Transit Bureau District 20  
Disciplinary Case Nos. 83752/08 & 84360/08

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The above-named member of the Department appeared before me on September 17, 2008, November 18 and 19, 2008, and April 3, 2009, charged with the following:

Disciplinary Case No. 83752/08

1. Said Sergeant Curtis Oates, assigned to Transit District 20, while assigned to Transit District 12, on or about August 31, 2007, while serving as Desk Officer, failed and neglected to confiscate an item of said prisoner's property which may have been used to facilitate escape, harm someone, or damage Department property.

P.G. 208-05, Page 1, Paragraph B – GENERAL SEARCH GUIDELINES

2. Said Sergeant Curtis Oates, assigned to Transit District 20, while assigned to Transit District 12, on or about September 7, 2007, took another member of the service out of the Precinct station house in order to accompany him on a 911 run without notifying the Desk Officer and/or Platoon Commander.

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT<sup>1</sup>

3. Said Sergeant Curtis Oates, assigned to Transit District 20, while assigned to Transit District 12, on or about September 29, 2007, failed to obey a lawful order given to him by Lieutenant David Perez, Transit District 12, to complete a summons voidance form.

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<sup>1</sup> This Patrol Guide section pertains to "Engaging in conduct prejudicial to good order, efficiency or discipline of the Department."

P.G. 203-03, Page 1, Paragraph 2 – COMPLIANCE WITH ORDERS

4. Said Sergeant Curtis Oates, assigned to Transit District 20, while assigned to Transit District 12, on or about September 29, 2007, spoke in a loud tone with Lieutenant David Perez, Transit District 12, and walked out of the room while being addressed by the Lieutenant.

P.G. 203-09, Page 1, Paragraph 2 – PUBLIC CONTACT

Disciplinary Case No. 84360/08

1. Said Sergeant Curtis Oates, assigned to Transit District 20, on or about and between May 2007 and July 2007, while assigned to Transit District 12, made inappropriate comments of a sexual nature to a female member of the service, identity known to the Department, and inappropriately touched said member of the service.

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT

2. Said Sergeant Curtis Oates, assigned to Transit District 20, on or about and between January 2006 and July 2007, while assigned to Transit District 12, made inappropriate comments to a female member of the service, identity known to the Department, and repeatedly asked said member of the service out on a date.

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT

3. Said Sergeant Curtis Oates, assigned to Transit District 20, on or about March 1, 2007, while assigned to Transit District 12, made inappropriate comments of a sexual nature to a female member of the service, identity known to the Department.

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT

4. Said Sergeant Curtis Oates, assigned to Transit District 20, on or about and between October 10, 2007 and October 11, 2007, while assigned to Transit District 34, made inappropriate comments of a sexual nature to a female civilian member of the service, identity known to the Department, asked said member of the service out on a date, and blew her a kiss.

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT

The Department was represented by Daniel Maurer, Esq., Department Advocate's Office. The Respondent was represented by Philip Mellea, Esq., in Disciplinary Case No. 83752/08, and Bruno Gioffre, Esq., in Disciplinary Case No. 84360/08.

The Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

### DECISION

#### Disciplinary Case No. 83752/08

The Respondent is found Not Guilty of Specification Nos. 1 through 3, and Guilty of Specification No. 4.

#### Disciplinary Case No. 84360/08

The Respondent is found Guilty as charged.

### INTRODUCTION

The charges against the Respondent are comprised of two separate and unrelated cases. While both cases were tried consecutively and are addressed in this decision, due to the nature of the charges and two separate defense counsels, this Court conducted a bifurcated proceeding.

### SUMMARY OF EVIDENCE PRESENTED

#### The Department's Case

The Department called, under Disciplinary Case No. 83752/08, Lieutenant David Perez. The Department called, under Disciplinary Case No. 84360/08, Police Officer Nancy Ortiz, Police Officer Marjorie Denis, Police Administrative Aide Doreen Lopez-Rodriguez, and Police Officer Nigeria Brown-Forde.

Disciplinary Case No. 83752/08Lieutenant David Perez

Perez testified that he is the second platoon commander at the 40<sup>th</sup> Precinct. Prior to this assignment, he was the third platoon commander at Transit Bureau District 12. In that capacity, he supervised the Respondent. As platoon commander, Perez said that he performed the duties of a desk officer and patrol supervisor.

On August 31, 2007, Perez stated that upon arriving to work, he signed in at the command log and inspected the prisoner cell area. He later went out on patrol with two officers who made an arrest at approximately 10:30 pm. Upon returning to the command, an officer began the arrest processing procedures. At one point, Perez testified, he entered the prisoner cell area to check on the status of the arrest. He stated that he "had noticed that there was a male prisoner in there with a set of earrings." Perez determined that the desk officer for the third platoon had been the Respondent and he summoned him on the intercom and questioned him about the prisoner in the cell with earrings. He described the earrings as "[w]hite gold, about a fingernail length in length on the ear, both ears." The Respondent claimed that he did not notice the earrings on the prisoner and exclaimed, "My bad." Perez interpreted this to mean that the Respondent was acknowledging an error in not recognizing the prisoner's earrings.

Perez testified as to the policy concerning prisoner's property. He said that the arresting officer "should do a whole inventory: cell phone, electronics, money, wallet, jewelry, and a voucher [for that property] done by the arresting officer." He said that the Respondent's role, as the desk officer, would have been to review the property voucher for accuracy, sign the document, seal the bag containing the property and lodge it in the

property locker. He noted that it was the Respondent's responsibility to ensure that the earrings had been vouchered. Perez testified that the Respondent's neglect in doing so was dangerous because the "earrings are a pointed object in the cells, if the prisoner takes that off and starts injecting other prisoners, then we have a big problem." Perez claimed that the prisoner's earrings could have been used to damage Department property, "facilitate escape," or as a means for injuring himself. At the Court's request, the earrings were described as having a "pointed needle, and then a clasp that clips on behind the ear" which goes into the earlobe.

On September 7, 2007, Perez said he was working from 7:45 pm to 4:30 am and the Respondent was also working. At one point that evening, Perez went out on patrol to "investigate some larcenies." He claimed that at 10:00 pm that night, he saw the Respondent, who was the patrol supervisor that evening, in a marked police van with his driver and a third person in the rear seat. The Respondent's driver was Police Officer Younger, and the person in the rear seat was Police Officer Santiago. Perez found it odd that there were two officers in the van; he said that the Respondent would have had to inform him if he was taking a "third party" with him. The Court asked Perez what the Respondent was in violation of by taking an additional officer with him. Perez replied, "As a courtesy, he will let me know. That way I have to account for the officers in case the duty captain comes in or IAB may come in to get a command log entry, copies of the roll call and account for the officers during tour." He added that if a supervisor takes a subordinate out of the command, he is supposed to notify the desk officer. He agreed that so long as someone is notified, that requirement is satisfied. After seeing Santiago in the van with the Respondent, Perez said that he spoke with Sergeant Graham, the desk officer

that evening, who indicated that Santiago was at meal. Perez was never informed that the Respondent had taken Santiago to a 911 call.

On September 29, 2007, both Perez and the Respondent were working. Perez was the desk officer and the Respondent was assigned as patrol supervisor. Perez found a "summons voidance form" in his mailbox concerning a summons which had been improperly completed by one of his officers. He gave this form to the Respondent which was attached to the summons and asked him, "Listen, can you do this right now?" The Respondent then "[threw] it into his mailbox." Perez testified that he told the Respondent, "I would like that done now," and the Respondent replied, "I will do it later." He then told the Respondent, "I am going to give you a direct order to do it now before you go out." Thereafter, the Respondent asked to speak to Perez privately and the two went into the property room behind the desk and closed the door.

In the property room, Perez testified that the Respondent asked him if he had a problem with him. The Respondent told Perez that he felt that he was "picking on [him]." Perez claimed that he told the Respondent to complete the summons voidance form before going on patrol and said that the desk officer would conduct roll call. He also said that the Respondent exclaimed, "I'm tired of this shit, and you are picking on me." At this point, Perez said the Respondent had escalated his tone of voice and was "gesturing with his two fingers up in the air." He told the Respondent again that he was directing him to complete the report and the Respondent indicated, "I'm tired of this shit. You gave me two CDs (Command Disciplines). You didn't tell me." The Respondent then said, "You know what? I am out of here." Perez testified that he told the Respondent, "If you walk out of this room, there are going to be consequences." The

Respondent then “stormed” out of the room. The two CDs that the Respondent was referring to concerned the August 31 and September 7 incidents.

Perez said that the Respondent’s tone of voice during their conversation was “loud.” He elevated his voice when he exclaimed, “I’m tired of this shit.” Perez also felt that the Respondent was being discourteous. He reiterated that he ordered the Respondent not to leave the property room, but that he “stormed” out of the room anyway despite having been directed not to do so. Perez called the Duty Captain, “and that was it.” The summons voidance form was completed later that evening, which was not when the Respondent had been ordered to do it.

As a supervisor, Perez admitted that the Respondent outranks Santiago. By virtue of that, he had the ability to take her out of the command. Perez, however, testified that the Respondent was still obligated to notify the desk or the platoon commander, which he failed to do.

On cross-examination, Perez acknowledged that the summons voidance form was completed. He was positive that the Respondent had not been instructed to complete a command discipline for Police Officer Ward. He said that the voidance form was not completed before the Respondent went on patrol; he went on patrol, came back to the command, and then completed the paperwork. Perez said that the Duty Captain “must have” arrived after 4:00 pm because he was in Manhattan that day. He saw the Respondent go out but had “no knowledge” of what he was doing. He then said “from my knowledge” the Respondent went on patrol. Sergeant McAllister assumed the duties of the desk officer as Perez made notifications. The Respondent later returned to the command to speak to the captain.

Perez was asked if he observed the Respondent completing the summons voidance form. He indicated that he saw the Respondent in "like an administrative room" typing "the form" that evening, and later presented him with a voidance form. He was positive that the Respondent handed him a summons voidance form. Perez was then shown a completed Supervisor's Complaint Report/Command Discipline Election Report, (RX A).<sup>2</sup> He denied that this was the document that the Respondent gave him and said that the summons voidance form would be maintained by the officer who is in charge of the summonses in the command. Again, Perez insisted that (RX A) was not something that the Respondent gave him.

In response to the Court, Perez testified that a summons voidance form is completed when a summons is prepared in error. Only a supervisor can void a summons. Perez did not recall if he informed the Respondent why the summons contained errors, but does recall that he directed him to complete a voidance form. He also could not recall what was wrong with the particular summons that needed to be voided, but noted that the officer who reviews summonses for accuracy affixes a "Post-It" style note to the summons indicating the problem. Perez reiterated that the Respondent said he would complete the voidance form "later" and "flung it into his mailbox." The Respondent was preparing to conduct roll call when he was asked to complete the voidance form, and there was about five to seven minutes from the time Perez made his request to the commencement of roll call.

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<sup>2</sup> This document is commonly called a command discipline or "CD." It was issued to Police Officer Toris Ward for "violation of Patrol Procedure 206-03 sub 35, improper issuance of a summons. Summons #407887966-4, failure to sign back of summons, and incorrect date of offense." Under the section "Signature of supervisor preparing report" is typed "SGT. Curtis D. Oates. The document, however, is not signed.



Perez stated that the Respondent requested to speak with Perez in the property room and that his “tenor” was “agitated” and Perez was not sure why. The conversation in the property room was not about the summons voidance form, but was about how the Respondent felt he was being treated. Perez added that the Respondent was “heated” and denied being “heated” himself. During the conversation, the two were about ten feet away and the Respondent, while upset, did not threaten him. Perez denied that the Respondent ever said, “I can’t talk to you because I know you are going to write me up for insubordination” and noted that the Respondent “abruptly” walked away from him “while we were having a conversation.” When asked what was left to talk about, Perez said the discourteous manner in which the Respondent was acting. He reiterated that he told the Respondent “Don’t walk out [of] the room, I am giving you a direct order. Let’s finish the conversation...he just stormed out.” Thereafter, he told the Respondent to “get representation.”

Perez testified that he did not tell the Respondent to remain at the command because he had already given him orders twice, “[n]ow I will go to a captain and he will handle the situation.” He explained that he felt the situation was “too heated” and the Respondent was “very upset so I gave him a direct order. I called the captain, and from then on the captain takes over.”

Perez reaffirmed that the summons voidance form was completed and reiterated that he had no recollection of telling the Respondent to prepare a command discipline. During an Official Department Interview conducted by Lieutenant Murphy and Captain Rung, Perez recalled being asked questions and giving answers about the September 29 incident with the Respondent. He was asked about his response to a question by Rung

asking if he directed any corrective action be taken against Officer Ward, to which he replied, "Well, yes. I had instructed Oates to—a CD be issued to PO Ward." Perez claimed that he did not recall giving this answer, saying that the interview was "a long time ago." ... "I don't remember, sir...I don't remember that day in particular" referring to the day of the interview.

On September 7, 2007, Perez said he was working from 7:45 pm to 4:30 am. He was not aware of Santiago's location throughout the course of the day and thus, did not know if she went on a call with Lieutenant Beady but knew that there was a call for an officer shot that day. He was not sure if Santiago responded to that call, nor was he aware if she went on patrol with Beady without making an entry in the command log. Perez was aware that Santiago made an arrest that day and returned to the stationhouse to prepare paperwork. She subsequently went to meal. Perez acknowledged that at one point, he asked the desk officer where Santiago was and was told that she was on meal.

Perez was asked if there were any situations where a "third party can go into...a police car?" He indicated that there were not, but then said in situations such as a 10-13 or 10-85<sup>3</sup> call, officers respond from all over. He agreed that in those instances, officers in the precinct get into police cars and respond to the call. He testified that two or three officers could "absolutely" get into a police car to respond to a 10-13 or 10-85 call. No permission is required to do this. When asked if the same holds true for a 911 call, he said it depends on the type of call it is. Perez said it would not be proper for three officers in one car to respond to a civilian "hitting a pillar" at a train station, even if it was a fatality, and added that "you don't need two or three officers in one car for an aided

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<sup>3</sup> A reference to Department radio signals, for an officer requesting assistance or needing additional units.

case...” He said that a 911 call could be “any type of call” including a robbery, burglary or an aided case.

Perez said that he never spoke to Santiago when she returned to the station house with the Respondent; he only spoke with the Respondent. He also did not ask Santiago if she told anyone she was going to an assignment with the Respondent. Perez admitted that he does not know why Santiago went out with the Respondent.

When a prisoner is placed in the cell area, Perez testified that all personal property has to be removed. He noted that “sharp objects, jewelry and US currency” must be removed and added that “sharp items” appears in the Patrol Guide. Other items such as belts, shoe laces, and ties also have to be removed due to the potential that those items can be used by a prisoner to harm themselves or someone else. When asked about a specific provision in the Patrol Guide mandating that earrings be removed, Perez said that was covered under jewelry and that earrings must be removed from all prisoners regardless of size. When questioned about Patrol Guide § 208-05, Perez said that he was familiar with it and was aware of the subsection B of that provision. After reviewing that section of the Patrol Guide, he admitted that it does not say that jewelry has to be removed.

Regarding the earrings that Perez previously testified to, he described it as “about a fingernail length in size...white gold.” He claimed to have inspected the earring and said that the post was the “length of [the prisoner’s] earlobe.” He agreed that it went through the earlobe and clarified the post, or outside of the earring, was a “fingernail length.” The Court then asked Perez, “When you said the size of a fingernail, I thought you were talking about the adornment part [of the earring]. You are talking about the

length of the post? Perez replied "I am talking about the part that is visible to the average person that goes outside the earlobe, not the part that connects. The Court: Not the pointed part?" Perez: Correct." He was then asked by Counsel, "How big was the pointed part?" And he replied "That I did not see."

Perez claimed that he has never seen a prisoner in a cell area with an earring because they "can be used to hurt themselves, someone else or facilitate escape." When asked what protocol requires that earrings be removed, Perez responded that they are "personal property of a prisoner." Perez affirmed that he is familiar with the policy of central booking, and said that keys have to be vouchered at the precinct. He was unsure if the policy as to prisoner's keys has recently changed.

Perez testified that he conducted an investigation about the earrings in the cell. He said the arresting officer was Police Officer Mendez and he was unsure of who searched the prisoner. He noted that the desk officer was the Respondent when the prisoner was brought into the station house. He was unsure if a command discipline was issued to Mendez and said that he never told the Respondent to issue her a command discipline. Perez said that when he spoke to Mendez, she said "I forgot." He was unsure if Mendez was the last person to put the prisoner in the cell and agreed that it was not normal procedure for the sergeant to bring a prisoner into the cell area. Perez testified that he did not issue the Respondent a command discipline for "failure to supervise," that he issued one for "the prisoner situation."

Perez identified (RX B) as a command discipline that he issued to the Respondent as a result of an "unauthorized MOS...in a Department vehicle, without authority or permission from a third platoon commander." Perez said that he has not seen the actual

charges and specifications against the Respondent. He reiterated that the Respondent “should have notified myself, the third platoon commander, because I am responsible for all the operations that occur in the command...” He also said as the highest ranking member on the third platoon, he should have been informed by the Respondent that he was taking Santiago out in a marked van. Perez said that informing the desk officer would not be sufficient.

Perez said that he was in the precinct when the call that the Respondent and Santiago responded to was dispatched. When asked if he previously testified that he was on patrol, he said, “Yes, I was on patrol.”

On redirect examination, Perez reiterated that he did not recall his Official Department Interview conducted by Rung. He recalled, however, being questioned about the summons voidance form and acknowledged that the form was, in fact, completed that evening. As to the earring incident, Perez testified that the Respondent acknowledged his error by saying, “my bad...I did a mistake.” The Respondent was the desk officer on the day of the earring incident, and according to Perez, he was responsible for certifying arrests brought to the Precinct on that day. It was also his responsibility to issue voucher numbers and to review property vouchers for accuracy, and to ensure that property that should be vouchered is vouchered.

Perez said that he did not issue the Respondent a command discipline for failure to supervise because that is considered a more serious offense than what he did issue the Respondent a command discipline for.

Disciplinary Case No. 84360/08Police Officer Nancy Ortiz

Ortiz has been a member of the Department for seven-and-a-half years. The Respondent has supervised her for two to three years.

Ortiz testified that between May of 2007 to July of 2007, the Respondent said “a lot of” inappropriate “stuff” to her. She said he commented on her body, attire, and her toenails. Ortiz recounted she once wore a gold dress to a Christmas party that “was open a little bit,” and the Respondent got close to her and asked if she did “push-ups.”

Pertaining to the May to July of 2007 time period, Ortiz testified that on one occasion, she went to the desk to ask for permission to go across the street and get something for lunch. She claimed the Respondent replied, “Shake what your momma gave you.” Ortiz interpreted this to be a reference to her “behind.” The comment made her feel disgusted and she said that similar comments from the Respondent were frequent. Another time, Ortiz testified that the Respondent grabbed her hands at the desk and remarked, “You got big hands. What those big hands could do.” She interpreted this comment to have a sexual meaning, specifically, a reference to “masturbation.” Ortiz recalled that the Respondent “ha[d] a way of looking at me. He goes like I said, and that’s the way he looks at me. He has a smirk in his face like he means what he is saying...”

Ortiz further recalled that between May of 2007 and July of 2007, the Respondent said, “I like it like that.” She said that it happened when she was walking and she was offended because she perceived it in a sexual manner. Ortiz said it was possible the Respondent was referring to her “rear end” or chest. She recalled another incident where

the Respondent “rubbed into” her body while she was going down a stairway and emitted a sound “like he liked what he did.” Ortiz clarified that the Respondent’s upper arm contacted her body and he made a shivering-like sound. Ortiz was unaware if the Respondent ever made comments to other officers about her body.

Ortiz said she never had a personal relationship with the Respondent. She affirmed that she has filed Equal Employment Opportunity (EEO) complaints previously, the first of which was when pornographic materials were placed in her hat. Prior to this instance, Ortiz had never made any complaint against the Respondent. She explained that in this case, she made a Federal EEO complaint and was subsequently contacted by the Department’s Office of Equal Employment Opportunity (OEEO). Ortiz testified that she went personally to OEEO at Department Headquarters regarding the Respondent.

Ortiz testified that the Respondent’s conduct affected her “really bad.” She said that her hair started falling out and fading and she felt sick. She no longer wanted to go to work and was going to resign at one point. Ortiz claimed that each time she saw the Respondent her “heart pounded hard.” As to the incident when the Respondent grabbed her hands Ortiz indicated that it made her feel “disgusting...like an animal he can play with me.” She indicated that she never gave the Respondent permission to do what he did and that he did whatever he felt like doing.

Ortiz indicated that she is familiar with Police Officer Marjorie Denis, as they used to work together at Transit District 12. She did not recall speaking with Denis about the Respondent. Ortiz said she also knows Police Officer Nigeria Brown-Forde, as she worked with her at Transit District 12 as well. She recalled discussing the Respondent with her, and said that she mentioned “something to her.” She claimed that Brown-Forde

told her of a time where the Respondent “asked [people around him at the desk]...about like a long penis or a big penis. Would you suck your own penis.” Ortiz said she does not know Police Administrative Associate Doreen Lopez-Rodriguez.

Ortiz acknowledged having an incident with Police Officer Michelle Anglin, after which she received a command discipline. In detailing the incident, she said that she and Anglin had a disagreement as to whether or not a complainant was supposed to have been handcuffed. She said she told Anglin that a complainant is not supposed to be handcuffed and then the Respondent “...laughed and he looked” and indicated that a complainant was supposed to be handcuffed. Ortiz indicated that she believed the Respondent was making fun of her. Her disagreement with Anglin continued in the arrest processing area when “she started bad words and stuff.” She believed that Anglin complained to the Respondent because she was later subject to an Official Department Interview about the incident. Ultimately, she was issued a command discipline by the captain for “arguing around the prisoners” and said that she had to accept it because the penalty was a warning.

On cross-examination, Ortiz denied that the Respondent ever instructed her to refrain from arguing in front of prisoners. She admitted that the Respondent told her not to argue in the arrest processing area but noted that she believed that he said it in an unprofessional manner. She said she felt it was unprofessional because she was treated differently than Anglin, but she could not recall if the Respondent gave Anglin the same instruction. She admitted that she saw the Respondent and Anglin speaking outside and did not know what the conversation was about. Ortiz agreed that she reported the



incident to Lieutenant Noah because she felt that she was treated unfairly, who referred the matter to Lieutenant Rents.

Ortiz indicated that she does not really listen to music and never listens to rap or hip-hop music. Similarly, she was not aware that "Shake what your momma gave you" is an excerpt from a song. She knew that "I like it like that" were lyrics in a song and said she heard that song playing from car radios in the street before. Ortiz agreed that the Respondent sometimes sings at the desk or in the command but she contended that he made up songs and added his own lyrics to existing songs. Regarding the disagreement with Anglin, Ortiz said she was aware that she, too, was issued a command discipline.

As to the incident when the Respondent told her to "Shake what your momma gave you," Ortiz was asked to give a more detailed explanation of the event. She testified that he tilted his head and she interpreted this to mean that the Respondent meant what he was saying. The Respondent was about three feet away when he made the remark, and based on his proximity to her and the tilting of the head, Ortiz further believed that he meant what he was saying.

Regarding the incident where she claimed that the Respondent grabbed her hand, Ortiz testified that she found it "really offensive." This coupled with his remark, "What those hands could do," caused Ortiz to believe that the Respondent was referring to masturbation. She acknowledged that he never said anything about masturbation. Ortiz was not expecting the Respondent to grab her and it was "not a light touch...he unexpectedly came from behind and did that."

Ortiz denied that she took any psychological medication during May to July of 2007. She was not undergoing any counseling and reiterated that she was not taking any type of medication including antidepressants.

When the Respondent told Ortiz, "I like it like that," she reiterated that she was walking past him and he was about three feet away. She said that she looked at him and gave him "a bad look." She added that the Respondent made "that face" again and opined that it made him feel good. While she admitted that she testified that she believed this comment was a reference to her backside, Ortiz acknowledged that he never said anything to that effect. She acknowledged that the comment may have been about her chest too, although no comments were made about her chest.

Regarding the incident in the stairway where the Respondent made contact with Ortiz, she said that his arm made contact with her arm. She agreed that the stairwell was narrow and the Respondent was "big," but denied that he accidentally "brushed" against her. Ortiz reiterated that the Respondent "did the shivering" as he came into contact with her and she believed it represented that "he felt good about what he did."

Ortiz acknowledged making a complaint against the Respondent when she was a witness in a separate case. She told the investigator about the incidents that she testified to in this case. Ortiz also explained that she went to One Fordham Plaza in the Bronx to make a Federal EEO complaint against the Respondent, before she spoke to anyone in the Department. She did not immediately report the three incidents with the Respondent to the Department. Regarding the incident about her hat in 2002, Ortiz said someone took her hat and put four or five "asses and breasts and stuff like that" inside. She was offended and reported it immediately because she was upset. She claimed that she was

then threatened with a command discipline for failing to secure her hat. Ortiz denied that the Respondent instructed her to wear her hat later that day. Rather, she testified, he arrived at her post to make fun of her because he knew what happened to her hat. He asked her if her hat was “goeey.”

Ortiz was confronted with the fact that she made a complaint about her hat incident immediately and did not do so for the incidents with the Respondent. She contended that she “mentioned it to supervisors” and to the “lieutenant female” but she was ignored. She testified that “everybody in the Department seemed to cover up for each other.” Ortiz also said that she was hesitant to report the Respondent’s conduct to OEEEO because of a past bad experience with the hat incident. She explained that when she contacted OEEEO about her hat containing pornographic pictures, she was told “Why don’t you learn to have tough skin.” Ortiz was aware of OEEEO’s existence in May of 2007 and that it was confidential. She agreed, again, that she did not immediately report the incidents with the Respondent to OEEEO.

Ortiz said she is five feet tall. She said she never finished completing the Federal EEO complaint paperwork that she obtained in the Bronx but indicated that she plans to do so. She did not finish it because she had already been interviewed and thought the investigation had been completed.

Regarding the comment that the Respondent made to Brown-Forde about a penis, Ortiz admitted that she never personally heard this comment.

On redirect examination, Ortiz testified that the Respondent was not singing when he told her to “Shake what your momma gave you.” Regarding the incident with the pornographic pictures in her hat, Ortiz said that the Respondent asked her where her hat

was and whether or not it was gooey. She perceived this to be a reference to sperm and said she purchased a new hat.

Ortiz believed that other members of her command knew that she made an EEO complaint. She testified that the Respondent “started getting mad at the desk” and loudly stated “I don’t care who makes [an] EEO” complaint. Ortiz said her nickname at Transit District 12 was “Walking EEO.”

Police Officer Marjorie Denis

Denis has been a member of the Department since 2005. She has been assigned to Transit District 12 for the entirety of her career but was not supervised by the Respondent until January of 2007. Denis said she had no personal relationship with the Respondent outside of work or at work.

From January of 2006 to July of 2007, Denis testified that the Respondent asked her out on several dates. She explained that he would telephone the female locker room and when she would answer, he would say, “Denis, what is going on? When are we going to hook up? When are we going on a date?” She said that the Respondent constantly telephoned the female locker room to ask her out on a date. Denis said the locker room had a minimum of 50 lockers arranged in different rows and a bathroom and there is one telephone. Her locker is “one locker away” from the telephone and she was usually alone when the Respondent called the locker room. She indicated that this occurred “at least five times,” and every single time, the Respondent was soliciting a date. Denis testified that the Respondent knew when she would be in the locker room because each time she would come into the command for a break, she would advise the desk officer. She said

that there was no policy in the command about answering the telephone in the locker room and she answered the phone because of the possibility that a supervisor might be looking to contact her. No one other than the Respondent ever called her on the locker room telephone, and eventually, Denis stopped answering the telephone.

Denis testified that when the Respondent would ask her out on a date, she would decline because she was already in a relationship. The Respondent replied that he would not tell anyone about it.

In June of 2007, Denis acknowledged that the Respondent confronted her about not wanting to go out on a date with him. She recounted that the Respondent told her he needed to speak to her in the property room and once there he said, "What is the matter with you? You don't want to go out on a date with me? I am not going to tell anybody. What is it, you don't like big black men?" Denis testified that she was taken aback and did not know how to respond. She said she was nervous and petrified and told the Respondent that she was seeing someone else. During this conversation, the door to the property room was closed and this was the only way in or out. Denis said she was standing to the right of the door and the Respondent was directly in front of and over her. He was about an arm's length away and Denis said that he was "very intimidating." She said that the Respondent employed a "firm tone of voice" and used an official demeanor but never threatened her.

Denis testified that she did not complain to a supervisor or to OEEA about the conversation in the property room. She explained that she was nervous and did not know what to do and was concerned because the Respondent was a supervisor who had worked for the Department for over 15 years. Denis recalled that after the Respondent asked her

“What is the matter? Do you have a problem with big black men?” she was shaking and nervous and told him that she was “not a racist.” She then ran out of the property room and went upstairs. The Respondent did not try to prevent her from leaving the room.

Subsequent to the incident in the property room, Denis said that she intentionally attempted to avoid the Respondent. She stopped answering the telephone in the locker room or entered the command through alternate entrances and when the Respondent was not at the front desk. Denis added that after the property room incident, the Respondent subjected her to more “re-instruction.” She cited a specific instance where she arrived at the command with a prisoner and reported to the desk, as is procedure. The Respondent, who was assigned as the desk officer, was not present at the desk. She brought the prisoner “to the back” and “secured him” and then completed a prisoner pedigree card<sup>4</sup> and placed it on the command log. She said that she then saw the Respondent walking back to the desk and exclaimed, “Denis, you are not supposed to be there.” Some time thereafter, Perez told her that the Respondent did not want her behind the desk. Denis said she felt that she did nothing wrong.

Denis testified that the Department learned of her incidents with the Respondent when they contacted her. She was unsure if the contact was the result of a prior investigation and said that OEEO asked her if there was anything she wanted to say. She was apprehensive to give any information when contacted, but later called them to report the Respondent’s conduct because he made her feel uncomfortable.

Denis acknowledged that she knows Brown-Forde as they are friends and co-workers. They discussed the Respondent “very briefly.” While she knows Ortiz, she never discussed the Respondent with her. She does not know Lopez-Rodriguez. Denis

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<sup>4</sup> A Department form which documents information pertaining to an arrest.

testified she never asked the Respondent out on a date, flirted with him, or asked for his phone number. Nor has she had a relationship with Perez. Denis has never given the Respondent a back rub or said "Let me know when you are available." She admitted that she knows who Police Officer Robinson is and did not recall trying to influence her to file a complaint against the Respondent.

On cross-examination, Denis said she was first assigned to Transit District 12 in 2006, just after New Year's. For her first six months, she was assigned to "Impact" and was not supervised by the Respondent. She worked from 12:00 pm to 8:00 pm, and the Respondent worked from 4:00 pm to 12:00 am. She recalled that it was during this time period that she received the telephone calls from the Respondent in the female locker room. She did not receive any calls when she worked the midnight shift, and noted that the Respondent did not work midnights. In January of 2007, Denis was assigned to the Respondent's squad and said at this point, if the locker room phone rang, she did not answer it. She reiterated that the locker room telephone calls occurred between January and July of 2006.

Denis acknowledged that from January of 2007 to June of 2007, other than the property room incident, the Respondent never asked her out on a date. Denis testified that she began working in the midnight shift after Impact, in June of 2006. During her six months of working the midnight shift, the Respondent never asked her out on a date. She did not remember the exact month and year when it happened, but believed it happened in her first six months at Transit District 12, while assigned to Impact, during the same time period the Respondent was calling the female locker room. She said she could not pinpoint a time and noted that she was "trying to avoid the situation...not

trying to be in [the Respondent's] face or his direction." Denis then testified, "This happened back in 2006. We are in 2008. My statement was made way back. Do I remember every word that I said? I don't." Upon inquiry from the Court, Denis affirmed that the property room incident occurred during the same time frame as the telephone calls to the locker room, either before the first six months of 2006 or the first six months of 2007. She again stated that she worked the midnight shift for six months, beginning in July of 2006.

On redirect examination, Denis testified that she never asked the Respondent to go out on a date with her, nor did she ask for his phone number. She never massaged his shoulder in front of the desk. Denis reiterated that she knows Officer Robinson, but denied having a conversation about EEO relating to the Respondent with her. She recalled, however, having a conversation with Officer Zayes in the female locker room about the Respondent and the fact that someone had made an EEO complaint against him. She believed that Robinson was present in the locker room during this conversation. Denis testified that she would never tell someone to file an EEO complaint and added that she did not initiate the complaint against the Respondent.

Police Administrative Aide Doreen Lopez-Rodriguez

Lopez-Rodriguez testified that she has been a member of the Department since 2002. She has worked at Transit District 34 for two and a half years. She first met the Respondent when he was newly assigned to that command and said she never met him prior to that.



Lopez-Rodriguez recalled that in October of 2007, she introduced herself to the Respondent and told him that she was the timekeeper at her command and that she would be "taking care of [his] time." She had no other functions at the command but timekeeper and said her office was on the second floor. The main desk of the command was on the first floor, and in order to get to her office, Lopez-Rodriguez said she would have to walk upstairs or take the elevator.

Shortly after she introduced herself to the Respondent, Lopez-Rodriguez testified that he came to her office with a payroll inquiry. It was at this time that he also engaged her in a personal conversation. She said that he commented on her eyes, specifically the color, and then told her how petite she was. The Respondent also told her that he was 290 pounds "and that I would not be able to handle him. He would crush me." She interpreted this comment to have a sexual meaning and she felt degraded and very uncomfortable. She reported the Respondent to her supervisor, Senior Police Administrative Aide Multree, and told her that she wanted to give the Respondent "an opportunity to save himself and to back off." She recalled that the Respondent was in her office for about ten to 15 minutes when he made the remarks and left on his own.

The following day, Lopez-Rodriguez was alone in her office with the door open. The Respondent returned and asked her out on a date. He told her that he was not from Brooklyn and wanted her to show him around. She declined and told him that she was not interested or attracted to him. The Respondent then said that he "didn't want to miss the opportunity of being with [her]." She told him that he was making her feel uncomfortable and to please leave. The Respondent did not heed this request and he reiterated his desire on "being with [her]." She asked him to leave again and he did.

Later that day, Lopez-Rodriguez supervisors were in her office discussing the Respondent. He returned and discussed "chart changes" with her supervisor. Lopez-Rodriguez said he was not in the office very long, and upon leaving, he "walked out [of] the hallway on the first desk by the door...where the senior principal couldn't see him, and turns around in a boyish way and throws me a kiss." She then told her supervisor what the Respondent did.

Lopez-Rodriguez never asked the Respondent where he wanted to go on a date. She believed that she told him that she was not interested in him but she never specifically told him he was being disrespectful. On the second occasion that the Respondent went to her office, he asked her about her marital status. Ultimately, because of his conduct, the Respondent was banned from the second floor of the command. Lopez-Rodriguez said that she purposefully avoided contact with the Respondent. She would call the command's custodian before entering the command to see if he was present. She also used a back door to avoid seeing him. While Lopez knew that a desk officer is responsible for stationhouse security, she was unsure if the Respondent had this responsibility taken away from him.

Lopez-Rodriguez recalled contacting the Respondent's prior command, Transit District 12, in order to ensure his payroll paperwork and time sheets were forwarded. She spoke to Police Administrative Aide Garcia and asked her about the Respondent. She inquired about him because his advances made her feel uncomfortable, but she did not tell Garcia that he made an advance or inappropriate remarks. Garcia told Lopez-Rodriguez that the Respondent was "a big teddy bear."

Lopez-Rodriguez has never met Officers Brown-Forde, Ortiz or Denis. Nor has she ever spoken to any of them about the Respondent.

On cross-examination, Lopez-Rodriguez said that she did not recall if she told Garcia if the Respondent was bad news. During her first encounter with the Respondent, she recalled that he first made a comment about her eyes, followed by a comment about her petite size. Lopez-Rodriguez agreed that she thanked the Respondent after the comment about her eyes, and told him that she had weight loss surgery after the petite remark. Thereafter, he said that he weighed 290 pounds and "would probably crush me." Lopez-Rodriguez denied that the Respondent asked her to guess his weight, and similarly denied that she guessed he weighed 230 pounds. She said the Respondent never told her that if he were to hug her he would crush or hurt her.

After the Respondent made the remark that he would crush Lopez-Rodriguez, she said she felt uncomfortable and was "caught off guard." She noted that she has "never been spoken to like that before in my whole life." She got up from her desk, opened the door and affixed the door stopper so that the door remained ajar. She acknowledged that it was not until the following day, her second encounter with the Respondent, that she informed him that she felt uncomfortable. It was also on this day that he asked her on a date so that she could show him around Brooklyn. Lopez-Rodriguez believed that she did not definitively answer him, she said she "brushed it off" and told him he "should back off, you are coming on too strong." She denied that the Respondent ever told her that when he was younger, he was shy and missed out on opportunities because he did not ask people on dates.

When asked what transpired after telling the Respondent he was coming on too strong, she said, "After he said he didn't care, that he was coming on too strong, he didn't want to miss the opportunity of being with me." Lopez-Rodriguez then told the Respondent he was making her uncomfortable and to leave her office. That day, she told the Respondent twice that he was making her feel uncomfortable. Once she asked him to leave, he did. She did not ask the Respondent to leave until he made the remark about not wanting to miss an opportunity with her.

Police Officer Nigeria Brown-Forde

Brown-Forde testified that she has been a member of the Department for seven years. She worked with the Respondent for about three years at Transit District 12. She had no work or personal relationship with him and he did not directly supervise her.

Brown-Forde recalled that on March 1, 2007, she was present for a conversation that the Respondent was having with a group of police officers. She testified that during the conversation, he made a remark "along the lines of, if you could suck your own penis or if your neck could reach your penis, could you suck it." She said that she perceived this to be an inappropriate remark.

Brown-Forde acknowledged that she knows Ortiz from work but said she is not a friend of hers. She also knows Denis and is friends with her, and knows Lopez-Rodriguez as well. She never discussed the incident about the Respondent or any other allegation with those three individuals. Brown-Forde said she was never asked to file a complaint against the Respondent while in the female locker room. Similarly, neither Officers Denis nor Zayes asked her to make a complaint against the Respondent.

Upon examination by the Court, Brown-Forde said when the Respondent made the remark she testified to, she was assigned to the desk area. She did not believe he made the comments during a meeting. She believed his remark, "If your neck could reach your penis would you suck it?" pertained to "the guys in the vicinity."

On cross examination, Brown-Forde recalled a conversation in April of 2007 where the Respondent complimented her hair. She believed she may have thanked the Respondent for the compliment but admitted she did not remember. She noted that the Respondent often had nice things to say.

Brown-Forde agreed that the remark she testified about was not directed at her. Rather, it was directed at "anybody that was sitting there because there were more guys." She indicated that the Respondent made the remark near the desk area, in the vicinity where she was assigned. She admitted it was possible that the Respondent was unaware that she was near the desk when he made the remark.

While Brown-Forde found the remark inappropriate, she contended that she never made a complaint about it. She agreed that the first time she mentioned the incident was at an Official Department Interview on August 29, 2007.

On redirect examination, Brown-Forde acknowledged that an OEEO investigator from the Department contacted her. Brown said that the Respondent never made her feel uncomfortable and never made any other inappropriate remarks to her.

#### The Respondent's Case

The Respondent, under Disciplinary Case No. 83752/08, called Police Officer Venus Santiago, Sergeant Brian McAllister and Lieutenant Benjamin Graham as

witnesses. The Respondent, under Disciplinary Case No. 84360/08, called Police Officer Venus Santiago, Police Administrative Aide Maria Garcia, Police Officer Donna Kearney, Police Officer Koleen Robinson and Police Officer Michelle Anglin as witnesses.

The Respondent also testified in his own behalf.

Police Officer Venus Santiago

Disciplinary Case No. 83752/08

Santiago has been a member of the Department since January 13, 1992. She acknowledged that she was working on September 7, 2007, from 3:00 pm to 11:35 pm and responded to some assignments.

The first assignment that Santiago responded to on that day was for a member of the service shot. This call occurred “most likely” after 3:30 pm and she responded to this assignment with Officer Beady. The assignment took “over two hours or so” to complete and she subsequently returned to her command in order to finish processing an arrest that she had made earlier. Santiago had not yet spoke with the District Attorney’s office about her arrest until after she returned from the shooting call, and later discovered that the arrest had been “deferred.” She said that a deferred arrest would require her to “draw up” the arrest the following day.

Later, there was a call for “someone possibly getting struck by a pillar at Simpson Street.” Santiago assumed that this meant someone was “surfing” on a train, which means they were riding on top of the train or alongside the doors as it moved. When this call was dispatched, Santiago was at the front desk along with the Respondent and then-

Sergeant Graham. She asked the Respondent if she could accompany him on the call and he replied in the affirmative. She also told Graham, the desk officer that night, that she was responding to the assignment with the Respondent. Santiago said that she never took a meal that evening and the call was actually a "straight aided." She noted that she also responded to another assignment for a person who jumped off a platform at Parkchester.

At some point, Santiago returned to the command. She believed it was between 9:30 pm and 10:00 pm. Perez asked her what she was doing and she informed him that she had responded to some assignments and that her arrest had been deferred. Because she had overtime after her tour, she elected to "wait around." She did not recall if Perez had a conversation with the Respondent at that point. At 11:35 pm, Santiago commenced another assignment.

Santiago testified that the aforementioned was not the first instance where she has responded to an assignment with two other people in a car. The type of assignment governs the response and because she thought the assignment was "a surfer" who struck a pillar, Santiago volunteered her services. She believed that more officers were needed to help at serious assignments.

In her career, Santiago affirmed that she has arrested males and females who were wearing earrings. When asked to explain her understanding of earrings in the cell area, she testified, "If they (the earrings) are small earrings such as little studs and you are not able to hurt anyone or yourself with them, we leave them on. The only time we take them off, if they are really big earrings, or they are so big that someone else can grab them and yank them off your ears." If those circumstances do not exist, Santiago said the

earrings are left on. She has never had a prisoner returned from central booking because they were wearing earrings.

On cross-examination, Santiago reiterated that she informed Graham that she was responding to an assignment with the Respondent. She never told the Respondent that she told Graham. She acknowledged that she asked the Respondent if she could accompany him, and agreed that he is a sergeant and a supervisor. Asked why she told Graham, she testified, "Because at that time my case was not deferred yet also. I had to tell Sergeant Graham I was running out in case the District Attorney called me." Santiago admitted that she left the stationhouse despite the fact she was waiting for the District Attorney to call about her arrest. When she informed Graham that she was accompanying the Respondent, she indicated that he was already "halfway out the door or just about out the door." Santiago recalled an Official Department Interview about the incident but did not believe she was ever asked if she told anyone that she was accompanying the Respondent.

Sergeant Brian McAllister

McAllister testified that he was working on September 29, 2007. He believed he was working the "4 to 12" tour, the third platoon, as desk officer.

On that day, he overheard a conversation between Perez and the Respondent. He testified that Perez was "to the left by the cell area" and the Respondent was "a little behind me." Perez called the Respondent over to him "kind of abrasively, raised his voice and said 'Come over here. I want you to fill out a [command discipline].'" The



Respondent replied in a "calm manner" that he would get it done. He did not hear Perez ask the Respondent to complete it more than one time.

Subsequently, McAllister said that Perez was being "more abrasive than anything" and saying, "Come back here. I want to speak to you." Then, the Respondent and Perez went into the property room directly behind the desk. McAllister did not recall hearing Perez tell the Respondent "I want it done right now."

On cross-examination, McAllister reiterated that he only heard Perez direct the Respondent to complete a command discipline. He did not recall him requesting it two or three times. He testified that at that time, it was not possible that Perez asked more than once. He explained that this was so because Perez "didn't ask twice for something, he asked one time, and it got done so it wasn't an issue of he wasn't asking a second or third time." McAllister could not hear what was said in the property room, only that there were "two loud voices." He saw the Respondent walk out of the property room and Perez come out and very loudly say, "Stand by. I am going to call the duty captain," and the Respondent indicated that he was not going anywhere.

#### Lieutenant Benjamin Graham

Graham testified that on September 7, 2007, he was a sergeant working at Transit District 12. He recalled an incident that evening involving the Respondent and Santiago.

That evening, Graham said he was the desk officer in the command. A "priority call" was dispatched for what he believed to be a man under a train. Santiago, who had an arrest earlier, had finished the processing. Graham testified that when the call was dispatched, the Respondent said he was taking Santiago with him. Additionally, he said

about "15 seconds later" Santiago approached the desk and indicated that she was accompanying the Respondent to the assignment. Graham acknowledged, but noted that it was not up to him because the Respondent is a sergeant. In response to the Court, Graham indicated that he was a sergeant at the time.

Graham was asked about the protocol in taking additional personnel on priority calls. He said if an officer requested help over the radio, such as a signal 10-85, many officers would be "running out of the building and responding to the scene." He was unsure if Santiago took a break after finishing her arrest processing and did not believe that she was on meal when she left the stationhouse with the Respondent. Graham did not have a recollection of discussing this incident with Perez. He reiterated that the parties (Respondent and Santiago) notified him that they were leaving the stationhouse. Upon inquiry from the Court as to whether this notification is required, Graham said that it was to the extent that he had to make sure Santiago's prisoner was not unattended. Aside from that, he said that a "supervisor" is supposed to know. He was not aware that such a notification had to be made to a lieutenant.

On cross-examination, Graham said that the Respondent told him that he was taking Santiago with him. He recalled that the Respondent had a van that evening, and as he "ran out" of the command, he said he was taking Santiago. Similarly, he testified that Santiago stopped at the desk and said, "I am going to go with [the Respondent]..." While Graham was aware that Santiago had an arrest, he could not recall the particulars of it. When asked if he inquired of Santiago who would watch her prisoner, he indicated that he told her he would assume that responsibility. He then explained that the telephone switchboard operator can "watch a prisoner and be right next to the TS." Graham never

documented in the command log that Santiago was accompanying the Respondent, and never documented that the prisoner would be watched by another officer in her absence. He never asked what the status of the prisoner's criminal case was.

Graham reiterated that the Respondent's decision to take Santiago out of the command was not up to him. This was because the Respondent was a supervisor. He explained that because Santiago's rank was "police officer," the Respondent, as a sergeant, had the authority to take her on patrol. He reiterated that he had no recollection of Perez asking about Santiago's whereabouts, but said that it was not an impossibility that it happened.

Disciplinary Case No. 84360/08

Police Officer Venus Santiago

Santiago was re-called to testify on the Respondent's behalf for his second case.

Santiago testified that she was an assistant desk officer (ADO) at Transit District 12 and worked alongside the Respondent any time he was assigned as the desk officer.

Santiago recalled an interaction between Denis and the Respondent while she and the Respondent were performing desk duties. She said that Denis came to the desk and began rubbing his arm and saying, "You don't call me. When are we going to hang out." She noted that this occurred while Denis was assigned to the Impact program, not long after her initial assignment to the command. She never witnessed any other interaction between Denis and the Respondent other than "just hello, how are you doing..."

Santiago saw nothing inappropriate occur between the two.

Regarding Ortiz, Santiago said that she “wasn’t someone that I wanted to work with.” She testified that Ortiz was aggressive, condescending and often made complaints against other officers. Santiago said she witnessed no interactions between Ortiz and the Respondent other than when she would receive her assignment at roll call. She never saw any personal interaction between the two and never heard the Respondent say “shake what your momma gave you,” or “I like it like that.” Santiago said she “absolutely” did not see the Respondent grab Ortiz’s hand or rub against her. She testified that she saw nothing inappropriate happen between the two.

On cross-examination, Santiago said that she is no longer the ADO. She now works from 7:05 am to 3:23 pm “[doing] the budget.” She recalled that formerly, as the ADO, she worked Monday to Friday, 3:00 pm to 11:35 pm. She reiterated that she saw Denis rub the Respondent’s shoulder while she was assigned to the Impact program. When confronted with the fact that Denis, while in Impact, worked from 12:00 pm to 8:00 pm, Santiago said that her shift overlapped Denis’.

Santiago said that while Denis administered a shoulder rub to the Respondent, she stroked and squeezed his shoulder while the Respondent sat at the desk. He never told her to stop and the two were talking. In response to the Court’s inquiry, Santiago said that this occurred sometime in 2006. She did not remember how long the Respondent and Denis’ interaction lasted. She was about seven feet away watching the two, and was sure that Denis said to the Respondent, “You don’t call me. When are we going to hang out.” Santiago said that she had the occasion to work with Denis when she was assigned to the 4:00 pm to 12:00 am shift.

Santiago said that Ortiz was no friend of hers. She has had occasion to work with her and restated that she believes, based on her observation, that Ortiz is too aggressive and condescending. Santiago has heard of complaints that Ortiz had made through other officers. Santiago agreed that she did not constantly shadow the Respondent.

When asked if the Respondent had a clique of officers at Transit District 12, Santiago said, "I know he spoke to a few officers." When asked if she was in this group, Santiago testified that she hoped the Respondent liked working with her. She said that he "pretty much got along with everyone."

Police Administrative Aide Maria Garcia

Garcia testified that she has been assigned to Transit District 12 for ten years. She worked with the Respondent the entire time he was assigned to that command. She said that she worked as both captain's administrator and payroll and was the Respondent's timekeeper for about two years.

Garcia recalled receiving a telephone call from timekeeper, Lopez-Rodriguez, at Transit District 34 about a week or two after the Respondent was transferred there. She gave Lopez-Rodriguez payroll related information about the Respondent and told her "he is a good guy." Garcia said that Lopez-Rodriguez stated, "that's not what I heard...I heard nothing but bad things." She told her not to believe everything that people say and the conversation ended.

On cross-examination, Garcia said that Lopez-Rodriguez had not told her that the Respondent asked her out on a date. Similarly, she was not aware that the Respondent had made her feel uncomfortable with his advances. She never told Lopez-Rodriguez that the Respondent was a big teddy bear.

Police Officer Donna Kearney

Kearney testified that she is assigned to Transit District 12. She formerly worked with the Respondent during the 4:00 pm to 12:00 am shift.

Kearney recalled that Denis was assigned to Transit District 12 sometime in 2005. She further recalled an interaction between Denis and the Respondent, toward the end of 2005, when she was working as an assistant desk officer. She testified that Denis was processing an arrest and he was seated in the desk officer's seat. She noted that the Respondent was the desk officer at the time. Kearney then heard Denis, who "in a joking manner stepped on the desk" and said to the Respondent, "Sergeant I am almost done." She also watched her put her hand on his shoulder and say something else. Kearney indicated that she felt that Denis' remark was inappropriate because she was a rookie and an impact officer and found it improper for her to be flirting with the Respondent.

The female locker room at Transit District 12 has one telephone. Kearney said that it "hasn't worked in a couple of years" and the last time she answered it, she could not hear the other party. She doubted that the phone worked from January to July of 2006, and indicated that she believed the phone stopped working in 2005.

Kearney characterized Ortiz as "very argumentative and condescending." She noted that she had worked with her on patrol on several occasions in the past. Kearney recalled that Ortiz frequently would have "verbal loud altercations" with other officers, in front of civilians. She also claimed that Ortiz told her "to my face what she thought of me." Kearney testified that Ortiz made several EEO complaints against people working at Transit District 12, and as a result, people keep their distance from her. She recalled that in the past, Ortiz has ordered people away from the desk "in a derogatory tone of

voice,” accused an officer who accidentally bumped into her of injuring her wrist, and once grabbed an officer that she had a verbal altercation with. She stated that Ortiz is known as being hot-headed.

Kearney testified that she never observed any interaction between Ortiz and the Respondent, and never heard him make any remark as to “Shake what your momma gave you” or “I like it like that.” Similarly, she never saw the Respondent grab Ortiz and hold her hand. In response to the Court, Kearney indicated that typically, she would be assigned duties inside the command two to three times weekly.

On cross-examination, Kearney agreed that she was assigned to Transit District 12 in February of 2005. She worked a variety of assignments including patrol, anti-crime and as the auxiliary coordinator. She noted that she always performed the 4:00 pm to 12:00 am shift and that the commanding officer and special operations lieutenant had her perform a “tremendous amount” of administrative functions inside the command. She also explained that she was diagnosed with a heart condition, is almost 50 years old, and believed that the captain was doing her a favor and keeping her safe.

Kearney was sure that she was still performing patrol duties while Denis was assigned to the Impact program, around January of 2006. It was during this time period that she saw Denis rub the Respondent’s shoulders and flirt with him. She recalled that while Denis rubbed his shoulders and flirted with him, the Respondent questioned her about the status of an arrest that she had made previously. She did not hear the Respondent tell Denis to take her hands off of him and the only thing that she heard the Respondent say pertained to an arrest.

Regarding the locker room telephone Kearney affirmed that she believed it stopped working in 2005. She admitted that she was not one hundred percent sure. She assumed that the phones were capable of making outside calls because the other phones inside Transit District 12 could do so. While Kearney was sure that the locker room phone could make internal calls, she only assumed that they could be used for outside calls. Kearney indicated that she never personally used the locker room telephone to make a call, but has answered calls on it before.

Kearney reiterated that Ortiz was an argumentative person who was condescending and frequently engaged in arguments with coworkers. She never reported the incident that she had with Ortiz to any supervisors, but said "the entire command knew about it." Kearney restated that she was aware that Ortiz filed numerous EEO complaints and knew about it through the "rumor mill" and other officers. Kearney recalled an incident where someone scratched the word "rat" into Ortiz's locker and said the matter was investigated and her locker relocated. Ortiz showed Kearney the damage to her locker, and Kearney believed that filing an EEO was "certainly" appropriate in that instance.

Kearney restated that the members of Transit District 12 were hesitant to have interactions with Ortiz because of her frequency of filing EEO complaints. She said that she has personally seen Ortiz speak in a derogatory fashion while at the desk but said that no disciplinary action was ever taken. Because she was not assigned to the desk, Kearney indicated that she was not always present when the Respondent and Ortiz had interactions.



When questioned if she had an animus towards Ortiz, Kearney said that they had a good rapport despite Ortiz's attitude. She noted that the two still spoke even after Ortiz "told me off." Kearney said that she does not ignore any of her co-workers. With respect to her relationship with the Respondent, Kearney said that they were not particularly close. She indicated that the Respondent treated everyone the same, whether they were male or female.

Police Officer KOLEEN ROBINSON

Robinson testified that she is currently assigned to the Brooklyn Court Section. She was formerly assigned to Transit District 12. She indicated that she is familiar with the Respondent.

Robinson said that at Transit District 12, she worked from 8:00 am to 4:00 pm. She recalled a conversation with Denis in the female locker room at Transit District 12, but could not recall when it took place. She said that Denis approached her and said that the Respondent was harassing her and asked if he was doing the same to her. Robinson informed Denis that the Respondent was not, and she said that Denis tried to convince her to make an EEO complaint and said the Respondent was a "horrible guy" and to "watch out for him." Robinson said that Denis claimed that the Respondent was friendly and "might try to harass me and take me out try to talk to me or whatever."

Robinson said that the conversation in the locker room may have taken place in the summer because the weather was hot at the time. She recollected that Denis never said that she was dating the Respondent but said she was "interested in him." Robinson also said that Denis told her that "they did go out but somehow the relationship changed where she was unhappy with him..." and that "they are going to be making EEO

complaints about him and they are trying to get rid of him and wanted me to be a part of it.” Robinson testified that Officers Zayes and Brown-Forde were also present for the conversation and tried to convince her to make a complaint.

On cross-examination, Robinson said she was placed on modified assignment in September of 2008 for being arrested for felonious assault. She admitted that she was indicted by a Grand Jury in the Bronx for felony assault with a weapon. She is represented by an attorney. She did not recall if one of the charges included on the indictment was official misconduct, but agreed that she is being charged as a violent felony offender. She has also received charges and specifications.

Robinson denied that Denis wanted her to “fabricate” a complaint. When asked to explain her testimony that Denis tried to “convince me to make an EEO complaint,” Robinson explained that Denis informed her that in the event the Respondent were to, for instance, tell her “Robinson, you look nice today,” that remark would warrant an EEO complaint. Robinson reiterated that Zayes and Brown-Forde were present and that Denis said that she was interested in the Respondent. Denis also told her that she went on a date with the Respondent, a claim that Robinson never confirmed with the Respondent. Robinson said that Denis, Zayes and Brown-Forde did not use the words “get rid of him (the Respondent)”; that was her interpretation of the conversation.

Police Officer Michelle Anglin

Anglin testified that she is assigned to the Fleet Services Division. She formerly worked the day shift at Transit District 12 as a “beat officer” and worked with the Respondent on a few occasions.

Anglin recalled that she once had an argument with Ortiz at Transit District 12 while helping an officer with a prisoner. Ortiz was watching the complainant associated with the prisoner and Ortiz said, "Watch him, I have my own arrest." Anglin said that she ignored Ortiz's "attitude" and inadvertently asked her if the complainant had been handcuffed. The Respondent heard the remark and laughed. Anglin said, "I made a mistake" and went to the arrest processing room, followed by Ortiz who commenced an argument by remarking, "I don't need your ghetto attitude." Thereafter, the Respondent took her and Ortiz outside and instructed them not to argue in front of prisoners because it was unprofessional and inappropriate. The Respondent did not issue any command disciplines as a result of the incident, however, Anglin said that eventually she received one anyway.

The evening that she had the argument with Ortiz, Anglin said that she went home and received a phone call from the Respondent to return to Transit District 12 for an Official Department Interview about the matter. Anglin explained that Ortiz "went above him (the Respondent) and went to someone else. I think it was a lawsuit. She didn't like the way he handled it." Ultimately, Anglin was told to move her locker away from Ortiz's and both parties received command disciplines some months later. Ortiz was unsure when the argument took place, but the parties stipulated that it was November 28, 2005.

Anglin said that she and the Respondent worked different shifts but occasionally worked together. Aside from the incident where she had an argument with Ortiz, Anglin said that she never saw the Respondent interact with Ortiz and noted "most people stayed away from [Ortiz]."

On cross-examination, Anglin acknowledged that she was arrested and indicted on felony assault charges and official misconduct. She is being charged as a violent felony offender and also has pending charges and specifications.

Regarding the November 28 argument with Ortiz, Anglin said that she did not make an arrest on that day, someone else did. She was assisting another officer with an arrest. She did not recall if she made a 10-13 call at the scene of that arrest, nor did she recall if Ortiz responded to the scene of the arrest to assist. Anglin said that when she had the argument with Ortiz, she had been a member of the Department for ten months. She said that anytime a new female was assigned to Transit District 12, Ortiz was "nasty with them." She recalled an unpleasant incident that she had with Ortiz once at the scene of a suspicious package assignment, and another incident concerning the close proximity of their lockers. She never reported Ortiz to any supervisor.

After the argument on November 28, Anglin acknowledged that the Respondent spoke to Ortiz privately. She admitted that she could not hear what he said to her. Anglin testified that she learned that Ortiz called a lieutenant because she did not like the way in which the Respondent handled the argument.

#### The Respondent

#### Disciplinary Case No. 83752/08

The Respondent testified that he performed a variety of assignments up until his promotion to sergeant in 2001 when he was assigned to Transit District 12. He worked in that command for about six years and was transferred in October of 2007, just after the September 29, 2007 incident.

The Respondent testified that his relationship with Perez was a working one. Perez was his immediate supervisor as the third platoon commander and supervised him for less than a year. He characterized his relationship with Perez as “an unhealthy, unproductive professional relationship.” This started in December of 2006 when the Respondent received his evaluation from Perez, and from there, the relationship progressively eroded. The Respondent spoke to the captain around March of 2007 and informed him that he and Perez did not get along. He also believed that Perez had something against him on a personal level and requested to be removed from the third platoon. The captain was unable to accommodate the Respondent at that time.

On August 31, 2007, the Respondent was working from 2:15 pm to 11:47 pm. He was assigned as the desk officer that evening and said that his responsibilities included supervising the “entire command inside and out.” He testified that the first and only interaction he had with Perez on that day occurred at the end of the tour. At about 11:10 pm, he explained that Lieutenant Shapiro, the first platoon commander, relieved him and he went upstairs to change his clothing to go home. At about 11:20 pm, he heard an announcement on the loudspeaker made by Perez directing him to “attend to the desk.” Upon reporting to the desk, Perez told him, “Listen, I just checked the cells...A guy in the cells that was in there when you was [*sic*] on the desk, he has his earrings in his ear.” The Respondent said he was taken aback by Perez’s comments and informed him that he did not see any earrings on the prisoner. He testified that if the person did have earrings on, “they weren’t warranted enough for me to take them off.” Perez then inquired as to who transported the prisoner, and the Respondent informed him Boney and Ortiz. The

Respondent claimed that Perez then told him, "I am not mad at you. I am more mad at them. Forget about it. Don't worry about it." Perez also told Ortiz "Oh, forget about it."

Before going home for the evening, the Respondent went into the cell area. He looked at the prisoner, who still had the earrings in his ear. He testified that he observed the earrings to be small and said that there was "no need for this guy to have his earrings out." He denied they were a fingernail size, saying that they did not take up an earlobe. The Respondent said it was his understanding that earring removal is under the discretion of the desk officer, and said that in his career, he has seen prisoners with "door knocker type earrings, real big earrings with points on them" and would direct that those be removed. Similarly, for expensive earrings such as diamonds, the Respondent explained that he would have them removed and vouchered for the prisoner's safety. As to the instant case, the Respondent said that it was his professional opinion that the earrings in question could not be used to "hurt somebody or facilitate escape or destroy Department property."

The Respondent indicated that he is familiar with central booking protocols and what property needs to be removed from a prisoner and vouchered. He said that items such as belts, shoelaces, neck ties, bobby pins, scarves, fingernail clippers and pens must be removed. Also removed would be garments with strings and large belt buckles. While the Respondent testified that the Patrol Guide is specific as to certain things, it does not require that all jewelry be removed.

During his tenure at Transit District 12, the Respondent testified that he was usually the desk officer every other day. He generally alternated from patrol supervisor to desk officer in a rotating fashion with the other supervisors. The Respondent affirmed

that in his time at Transit District 12, he “definitely” removed earrings from prisoners if, in his professional opinion, they had the potential to be harmful. The Respondent testified that when he spoke to Perez about the prisoner with the earrings on August 31, Perez never said he was issuing him a command discipline. In fact, the Respondent said, Perez told him to “Forget about it. Don’t worry about it.” He only learned that Perez was issuing him a command discipline for the incident through another sergeant when that sergeant “caught an officer typing up the CD for me.” This was around the second week of September. The Respondent said to his knowledge, none of the other members involved with the prisoner with earrings received command disciplines.

On September 7, 2007, the Respondent was working from 2:50 pm to 11:47 pm and was the patrol supervisor. At one point that night, he was in the command for meal and was monitoring the radio. He heard a call for an assignment on Simpson Street for a “possible drag by the number 2 train at Simpson street, person possibly hit his head on the pillar.” The Respondent testified that in the Transit Bureau, unlike a patrol precinct, assignments involving “pedestrians” require more than two officers. The Respondent testified that as he was in the supervisor’s lounge having meal, the telephone rang and Graham informed him that Rung wanted him to handle the call. He told Graham that he was “already on it” and went downstairs. When he got downstairs, Santiago approached him and offered her assistance. After ensuring that an officer was watching Santiago’s prisoner from her earlier arrest, the Respondent accepted Santiago’s offer. He believed he told the desk officer, Graham, “Listen, I am taking Venus with me” and he acknowledged. He also believed Rung was near the desk as well. The Respondent said that he went down to the desk first, and as he was leaving the command to respond to the

call was when he was approached by Santiago. He then turned around and told Graham that he was taking her to the call.

The Respondent testified that he, Officer Young, who was his driver, and Santiago responded to the call. Another unit, Boney and Denis, had also responded. The Respondent said that in actuality, the call turned out to be a person who had a train door closed on him and was dragged. He said he told Boney and Denis to handle the job as an aided case and headed back to the command. While in route, another assignment was dispatched at the Parkchester station of the six line for a "man jumped from a structure." The Respondent said that he remarked, "Oh, man here we go again. It must be a full moon." Upon arriving at that assignment, the Respondent explained that it was a "local drunk" who was thrown out of a club. While handling that assignment, a woman approached the Respondent and said, "Officer, I am depressed." The Respondent recalled remarking, "It really must be a full moon" and said that the ambulance for the "local drunk" also took the depressed woman to the hospital.

At around 9:15 that evening, the Respondent said he returned to Transit District 12. There, he told Rung about the assignments and went upstairs to use the bathroom. Upon coming downstairs, Perez was at the desk and told the Respondent "I want to talk to you outside." Outside, Perez questioned the Respondent about his observation of Santiago "riding around in the van" with him. The Respondent testified that he informed Perez that they responded to assignments and he brought Santiago along in case he needed extra help. After explaining why Santiago was in the van, Perez said, "Okay, no problem...Don't worry about it." The Respondent went back on patrol at 9:30 pm. To his knowledge, Santiago did not receive a command discipline for accompanying him on



the assignments. He does not know any Patrol Guide provision or Interim Order addressing the issue of a third person in a police car or van. The Respondent noted that he has had occasion to take an additional officer with him in his car, for instance, to “post change” an officer and transport the person to a different post. Perez never advised the Respondent that he was not permitted to take a third person in a vehicle. The Respondent said that it is “not warranted” unless a supervisor assigns a person to a vehicle. On inquiry from the Court, the Respondent indicated that a sergeant in a patrol precinct can authorize a third officer in a car.

On September 29, 2007, the Respondent was working from 2:50 pm to 11:47 pm, as the patrol supervisor. In detailing his responsibilities as the patrol supervisor on that day, he said that Perez “had his own protocol,” and “did roll call the way he wanted to...” The Respondent signed in upon arrival and went upstairs to change. In the locker room, Perez told the Respondent that he “had patrol.” The Respondent said he went downstairs to conduct roll call, but before he could do so, Perez handed him a summons with a “yellow sticky” on it. He told him to “issue Officer Ward a [command discipline] for the summons.” The Respondent said he took the paperwork from Perez and put it in his mailbox. Perez subsequently said, “I want that done by the end of the day” and then said, “As a matter of fact, I want that done before you go out.” Thereafter, the Respondent asked to speak with Perez in private in the property room behind the desk.

The Respondent reiterated that he and Perez had a poor relationship. He said the previous day, September 28, he spoke with the captain, expressed his distaste for Perez and voiced his desire to be transferred off the third platoon. When he and Perez entered the property room, the Respondent said he asked him, “Listen, why are you pushing me?”

He said Perez had a tendency to become agitated and was becoming "a little agitated." The Respondent wanted to discuss the command disciplines that Perez had issued him, and Perez claimed that he had already told the Respondent he was issuing the command disciplines. Perez told the Respondent to lower his voice, but the Respondent informed him that he was the one who was yelling. The Respondent testified that he was "dealing with this for a year now." Because the conversation was becoming "hostile," the Respondent said that he elected to remove himself "from a hostile situation, because I felt if I say anything to this guy, number one, I was going to be suspended for discourtesy, he is going to write me up..."

The Respondent went to open the door to the property room in order to leave and said that Perez told him, "If you walk out that door, you are going to have problems." He then told Perez to call the duty captain because he was "not going to take this abuse anymore." Perez replied, "I am going to call the duty captain, that is right...I am going to write you up for your smartass remark and your big mouth." He also told the Respondent, "You better get your representation, because you are going to get in trouble." The Respondent went upstairs to contact his Sergeant's Benevolent Association (SBA) delegate who was unavailable and instructed him to call Sergeant Augello, a trustee of the SBA. Augello told the Respondent to "stay away from [Perez]" and to wait for his arrival. The Respondent claimed he never left the command and Augello arrived at about 4:25 pm. Perez was outside the command on his cell phone.

Eventually, Rung arrived at the command. The Respondent and Augello went to his office and learned that Perez alleged that the Respondent refused his order to prepare a command discipline. Augello informed Rung that this was inaccurate and Rung

conferred with Captain Moreno, the commanding officer. Because of the ongoing problems between Perez and the Respondent, the Respondent was transferred to the day tour, effective the following day. Before going on patrol, the Respondent typed the command discipline for Ward and gave it to Perez. He noted that he went on patrol at about 5:30 pm and did not come back to the command until 8:00 pm.

The Respondent denied that he was ever asked to complete a summons voidance form. He said he was specifically instructed to complete a command discipline only. He identified RX A as a Supervisor's Complaint Report/Command Discipline Election Report that he prepared. He believed he completed it "definitely" before going on patrol, between 5:00 pm and 5:30 pm. This was the only form that was filled out regarding Ward's issuance of the summons.

As to Perez's earlier testimony that the Respondent said "my bad" in response to the earring incident, the Respondent denied this. He said that he did not have the type of relationship with Perez where he would have used "slang" language in conversing with him.

On cross-examination, the Respondent acknowledged that he believes it is a "discretionary" assessment as to whether or not earrings should be removed from a prisoner. He reiterated that it was his opinion that the earrings on the prisoner in question for this case did not pose any threat.

Regarding Santiago accompanying him on a radio call, the Respondent denied that she was brought along "just to hang out." He said he was responding to a "legitimate job." The Respondent said that he and Santiago enjoyed a "good rapport...professional relationship" and noted that she was formerly the assistant desk officer at Transit District

12. He noted, however, that once Perez arrived at the command, "he [didn't] want her in the (station) house anymore, being he didn't want her to have that position." The Respondent agreed that as a result, Santiago was not happy at losing her position as assistant desk officer. He denied that they commiserated together and testified that he always told his officers to "assess people and situations for yourself."

On questioning regarding the conversation that he had with Perez in the property room, the Respondent admitted that "it got loud." When asked if the loudness was mutual, the Respondent said that Perez was loud and "maybe my voice got loud so he could hear me." The Respondent characterized Perez as a "very confrontational person...a bully" and expressed his belief that he was a poor supervisor. He admitted that his supervisory style differs greatly from Perez's.

As to the command discipline that was issued to Ward, the Respondent said that it was for failing to sign a summons. Typically this is not a disciplinary offense. He recounted that Ward had issued a criminal court summons to an individual who was initially arrested for assault. The victim was not interested in bringing charges against the defendant, and so, a summons was issued for "fighting in the street." It was this summons that Ward failed to sign the reverse side of. The Respondent reiterated that this was not really a disciplinary offense, rather, it "would be a re-instruction and/or summons voidance." A command discipline was only issued because the Respondent said that he was ordered to do it. A summons voidance form is completed when a summons has not been filled out properly, and the Respondent noted that they are not always filled out as the error on the summons can sometimes be rectified prior to the return date. The Respondent reiterated that Perez handed him the summons back with a "sticky" on it that

said “the actual Patrol Guide procedure. The infraction that he said Officer Ward did was improper issuance of a C summons.” The Respondent denied he was ever instructed to prepare a summons voidance form.

The Respondent affirmed that he was the only person who typed the command discipline for Ward and gave it to Perez. He did not obtain a serial number for the command discipline because the book is kept locked in the Integrity Control Officer’s office. The Respondent typed the narrative on the form based on what was written on the “yellow sticky.”

#### Disciplinary Case No. 84360/08

Because a bifurcated proceeding was conducted, the Respondent testified in his defense on two separate occasions. Accordingly, he took the stand again at a later date.

Regarding the second case against him, the Respondent testified that in May of 2007, he was assigned to Transit District 12 as the supervisor of squad C-1. He performed desk, patrol and administrative duties.

The Respondent described the incident between Ortiz and Anglin. He recalled that Ortiz was processing an arrest for assault inside of the command. Anglin had transported the prisoner from the scene of the assignment to the command, and at some point, the issue of whether or not a complainant should be handcuffed arose. After providing instructions about the issue, the Respondent recalled that Ortiz and Anglin had an argument about 30 seconds later. He brought them outside and told them, “As long as I am on the desk there will be no fighting with the prisoners.” He said that he directed his remarks at both Anglin and Ortiz, and while Anglin said she understood, Ortiz “said I

understand in a sarcastic way.” Anglin told the Respondent that Ortiz had something against her and the Respondent informed her that she had to conduct herself professionally. He believed that the issue was finished, however, he was later approached by the platoon commander and asked about the argument. The Respondent informed him that he handled the situation, but he later learned that Ortiz made a complaint that she had been threatened. An official investigation then ensued. The Respondent noted that this argument happened between April and June of 2006.

The Respondent testified that he had another incident with Ortiz. He recounted that he once assigned her an overtime post to “watch the water tunnel for the trains.” The person who was initially assigned this duty was unavailable due to an arrest or illness and the post had to be filled. The Respondent polled the officers for volunteers and no one was interested. He subsequently assigned Ortiz because she was the lowest in seniority present and “she wasn’t too happy.” The Respondent was later approached by another sergeant and questioned as to why he gave the assignment to Ortiz.

As for the incident concerning her hat, the Respondent testified that Ortiz left “her hat out unsecured overnight at the desk.” Someone placed a figure of “a female with a large posterior” and placed it in her hat. Ortiz was offended and wanted to make a complaint, however, the Respondent was unsure if she did so. She was also told that she could be issued a command discipline for failing to secure her hat. The Respondent believed that Ortiz was very sensitive about “a lot of things and situations” and testified that he believed “in my heart” that she made a complaint against him and Officer Menendez for selling DVD’s with the Respondent’s knowledge.

The Respondent denied that he told Ortiz “shake what your momma gave you,” and “you like it like that.” He similarly denied commenting on her hands and rubbing against her while passing her. He claimed that his relationship with Ortiz was professional “with very little talk possible.” The Respondent said he did not want to be “involved in her nonsense and saying you said something. I feel offended.” He said that he witnessed Ortiz “do it to other people” and said he was “not going to jump in the frying pan because the fire is hot.”

Regarding Denis’ allegations, the Respondent testified that she was flirtatious and frequently made small talk with him. On occasion, she would put her hand on his shoulder at the desk and say, “Hi Sergeant. How are you?” Another time he recalled that she grabbed his left arm, commented that it was large, and said, “I am going to have to give you my number.” The two then exchanged Nextel numbers and she later invited him out for a drink at the “Poppy Nice” bar on Boston Road, but “it never transpired” and the issue never came up again.

The Respondent denied that he ever invited Denis into the property room to confront her about not going on a date with him. He countered that she was the “aggressor,” grabbed his arm and said that she liked big black men. The Respondent testified that when he meets women, “I am the aggressor but not in this situation.” He felt that Denis was “playing games.” The Respondent noted that Perez arrived at the command around September of 2006, and the flirtation between he and Denis was prior to this.

The Respondent testified that he did not recall having the conversation that Brown-Forde testified about. He said that he was not “the best of friends” with her and

was surprised that she made an allegation against him. He was not surprised, however, to learn that she made her allegation once she became friends with Denis. The Respondent testified that many people at Transit District 12 did not want to work with Brown-Forde because she "is a naïve person as far as the job is concerned," and "her tactics and her articulation isn't as good. A lot of people felt uncomfortable working with her."

The Respondent opined that Brown-Forde became friendly with Denis because she was "hooked up" by Perez with "days off, lost time, nice assignments, getting out of details" and his relationship with her "really deteriorated" at that time. He denied that he ever made the comment that she alleged he did and did not recall anyone in the desk area making a comment of that type.

The Respondent testified that he was transferred from Transit District 12 to Transit District 34 as a result of "the history with Perez." When he arrived at Transit District 34, while working as the desk officer one morning, he said Lopez-Rodriguez introduced herself to him and identified herself as the timekeeper at the command. The Respondent testified that later that same day, a man came into the command and asked to see Lopez-Rodriguez. He noted that the man was hostile and suspected that he may have been an ex-boyfriend. He told the man that she was unavailable and later called Lopez-Rodriguez to tell her that someone had been looking for her. According to the Respondent, she came downstairs and elaborated that the gentleman was a former member of the Department who was involved in litigation with the Department and wanted her to "go along with his case."

The following day, the Respondent said he was on patrol. He went upstairs and said hello to Lopez-Rodriguez and complimented her eye color. He said that she asked if



he was married and also said "I am free to hang out any time." The Respondent said he returned to Lopez-Rodriguez later the same day to ask her a payroll question and she proceeded to call Maria, from the Respondent's former command. Because Lopez-Rodriguez was speaking low, the Respondent could not hear what she was saying to Maria. He later called Maria to find out what was said and learned that Lopez-Rodriguez "...said not so nice things about you...she knew why you got transferred." The Respondent went back on patrol and did not return to Lopez-Rodriguez's office until a few days later. He returned to ask a question about his night differential and at one point said, "Listen, maybe you and I can go out sometime." He claimed that Lopez-Rodriguez said "Sure, where do you want to go." Additionally, he said that she told him, "Not for nothing you come on kind of strong." He told her that he did not mean to be disrespectful. The Respondent testified, "The reason why I say what I say because when I was younger I didn't articulate myself. I thought it was a secret code...I found out, be yourself and say what you want to say. It worked for me."

The Respondent testified that the first time he went to Lopez-Rodriguez's office he saw her eating and commented that she did not "eat heavy." She told him that she had weight loss surgery and no longer eats a lot. The Respondent said that she was shocked when he told her that he weighed 300 pounds and he told her, "If I was to give you a hug I would crush you."

At one point, the ICO of Transit District 34 told the Respondent that Lopez-Rodriguez lodged an EEO complaint against him. He was "shocked" and said, "Wait a minute. Something is not right. I just asked her out. She was willing to go out. She accepted my invitation." The captain at the command told him to stay off of the second

floor with the exception of conducting roll call. Shortly thereafter, he was told to report to Transit District 20 the following day, as OEEA had him transferred there.

On cross-examination, the Respondent said that he was unaware that Menendez made a complaint against him. Similarly, he was unaware that it was Menendez's complaint which caused EEO to contact Ortiz, Denis, Brown-Forde and the other complainants.

The Respondent affirmed that Ortiz was not a well liked police officer. He agreed that she was known as a trouble maker and testified that she "told" on other officers to supervisors, and further agreed that he believed her to be very sensitive. The Respondent contended that he had no interaction with Ortiz and said that she once told an officer who asked if she was Mexican that she was offended by his question. She told him, "How dare you call me Mexican." He told the officer, "Listen don't say anything to her." This occurred after the incident with Ortiz's hat, in which he believed that a photocopy of a picture of a woman wearing a thong was placed inside her hat. The same picture was apparently placed inside a male officer's hat as well.

Shortly after the picture had been placed in Ortiz's hat, the Respondent said that he saw her on post without her hat on. He told her that she was supposed to wear her hat in the transit system. He denied that he threatened her with a command discipline and said he was "not a CD type of boss." He said that he told her that she could receive a command discipline for not having her hat secured. The Respondent denied that he made any comments about bodily fluids in Ortiz's hat.

The Respondent reiterated that he believed Ortiz made a complaint to IAB about him, but admitted he has no proof of it. He believed that he and Menendez were

subjected to an integrity test conducted by IAB where an unattended bag of DVDs were left on Menendez's post. He said that Menendez vouchered the DVDs, 25 in total, and IAB later arrived at the command to view the property log. The Respondent said he suspected Ortiz wrote an anonymous letter to IAB alleging that he colluded with Menendez to sell illegal DVDs. No letters were ever shown to the Respondent by IAB and the Respondent said he has never worked in IAB. He was aware that IAB does various tests. He believed 17 or 18 officers were working on the day of the integrity test.

Despite the fact that he was taken aback by Denis commenting on the size of his arms, the Respondent said he gave her his telephone number because "it is rare that a female comes on to me. It doesn't happen to me." The Respondent said he never disciplined Denis regarding anything, although she was on her cell phone and smoking one time. He said he gave her a good evaluation and never admonished her. He never refused her advances. The Respondent then alleged that once Perez arrived at Transit District 12, Denis "couldn't have the situation come up that she was flirting with me and it was her doing the flirting. She had to turn it around when he came to the command like I was bothering her." The Respondent did not believe that Ortiz had a relationship with Perez, but he said he saw her rubbing his back. Brown-Forde did not have a relationship with Perez and he believed that Perez and Lopez-Rodriguez did not know each other.

The Respondent reiterated that he never made the remark "If you had a big penis would you suck it." He believed that Brown-Forde went "with the program" because she would not have been taken care of by Perez if she did not.

The Respondent admitted that he found Lopez-Rodriguez attractive and complimented her eyes. He reiterated that he spoke to Garcia after Lopez-Rodriguez did

and found that she said he was a “bad guy.” This occurred before he asked her out on a date, a request that she accepted. After agreeing to go on a date with him, the Respondent said that she told him he was coming on too strong.

After Lopez told him that he was coming on too strong, the Respondent told her that when he was younger, he did not articulate himself well with women. He denied ever blowing her a kiss.

On redirect examination, the Respondent testified that when he saw Denis on her cell phone he “verbally instructed her.” He has done the same with other subordinates.

With respect to Lopez-Rodriguez’s testimony that she would call before reporting to work to ensure that the Respondent was not at the desk, he contended that she began her shift at 6:00 am and he began at 6:55 am. He also said that she could not use the back door because it was alarmed and that she had to walk into the command through the front door.

### FINDINGS AND ANALYSIS

#### Disciplinary Case No. 83752/08

The charges and specifications under this case stem from three separate incidents that occurred between the Respondent and his platoon commander, Perez, over a period of less than a month.

#### Specification No. 1

The first charge against the Respondent concerns his alleged failure to confiscate a prisoner’s earrings “which may have been used to facilitate escape, harm someone, or damage Department property.”

It is not in dispute that on August 31, 2007, the Respondent was working at Transit District 12 as the desk officer. It is also not disputed that sometime that night, a prisoner was brought into the command for arrest processing. This prisoner was wearing a set of earrings and was placed into a holding cell. Perez issued the Respondent a command discipline for failing to ensure that the earrings were removed and vouchered from the prisoner.

Under Patrol Guide § 208-05, the guidelines for conducting searches related to arrests are enumerated. A review of the subsection under which the Respondent is charged with violating, subsection one, mandates that items on prisoners that are “lawfully carried but that are dangerous to life, may facilitate escape or may be used to damage Department property will also be removed from the subject.” The question therefore becomes: has it been evidenced that the earrings on the prisoner meet the criteria under the Patrol Guide that they are dangerous to life, can be used to facilitate escape or can be used to damage department property? I find that the record has not established this.

Perez testified that the earring was a “fingernail length.” He said all earrings attach with a “pointy object” and it is this object that “can be used to hurt themselves, someone else or facilitate escape.” When the Court asked him how big the pointed portion of the earring was, he said that he never saw it. He clarified that he was referring to the adornment part as a fingernail in length. This Court, therefore, finds that his admission to not seeing the pointed part deprived him of viewing the very element of the earring where a common sense standard should have been applied to mandate that they be removed from the prisoner.

The Respondent, on the other hand, testified that he uses his judgment as to whether or not prisoner's earrings should be removed. He believed that it was at the "discretion of the desk officer." As to the earrings in the case at bar, the Respondent recalled that they were small and that there was "no need for this guy to have his earrings out." Perez acknowledged that there was no absolute requirement mandating that all jewelry be removed. Furthermore, it is well-established that the Patrol Guide is just that, a guide.

The Court is mindful of the fact that earrings are made in a myriad of different styles, shapes and materials. It is not logical to conclude that every earring is dangerous to life, may facilitate escape or can be used to damage Department property. Further, the record was not persuasive enough to demonstrate that the earrings on the prisoner in question were dangerous, and thus, had to be confiscated and vouchered.

I find the Respondent Not Guilty of Specification No. 1.

Specification No. 2

The second charge against the Respondent alleges that he took a police officer, Santiago, on a 911 run without notifying the "desk officer and/or platoon commander." A review of the Patrol Guide section under which the Respondent is charged with violating, § 203-10, is entirely absent of any requirement that a supervisory officer make a notification to the "desk officer and/or a platoon commander" when taking a member of the service on an assignment. Moreover, it should be noted that the Respondent is charged with violating subsection five of this Patrol Guide procedure, specifically, the "conduct prejudicial" subsection of that provision.

Even assuming that the Respondent did, in fact, fail to notify the desk officer and/or platoon commander that he was taking Santiago out on patrol, I find that such conduct, on its face, falls short of “conduct prejudicial to the good order, efficiency or discipline of the Department.” The Department did not offer any evidence that the Respondent’s action of taking Santiago from the command caused any sort of aggravating factors or conditions. In fact, the opposite was demonstrated: Santiago’s prisoner was not left unattended and there was no evidence of any staffing disruption within Transit District 12. The record suggests that the Respondent was simply trying to ensure that he had enough manpower for what he perceived to be a potentially serious assignment. While Perez seemed to assert in his testimony that the Respondent had an obligation to notify him when he took Santiago in the van, he informed the Court that as a “courtesy” the Respondent was supposed to tell him. While a courtesy it might be, it is not clear to this Court that the Respondent had any obligation to notify Perez under the Patrol Guide. This is even more relevant when the wording of the specification is vague in that it charges a “failure to notify the Desk Officer *and/or* (emphasis added) Platoon Commander.”

Notwithstanding this, however, this Court finds that the Respondent *did* notify the desk officer that Santiago was accompanying him in his van to respond to a call. Graham, the desk officer that evening, credibly testified that he was not only told by Santiago that she was leaving the command but by the Respondent as well. Graham is a disinterested witness with no motive to lie. In light of the foregoing, it has not been established that the Respondent was required to notify Perez.

Accordingly, I find the Respondent Not Guilty of Specification No. 2.

Specification Nos. 3 and 4

The final two charges under this case are the result of two September 29, 2007 incidents between the Respondent and Perez.

With respect to the third specification, the Respondent testified that he was the patrol supervisor on this day. Prior to conducting the roll call, he was approached by Perez who directed him to issue a command discipline to an officer for not preparing a criminal court summons properly. Perez, on the other hand, insisted that he directed the preparation of a summons avoidance form and not a command discipline form. Despite the fact that Perez claimed the avoidance form was, in fact, completed by the Respondent, the Department was unable to furnish this Court with the completed form.

McAllister testified that he was assigned as the desk officer on September 29 and overheard an exchange between the Respondent and Perez. He corroborated the Respondent's testimony that he was ordered to complete a command discipline. This Court found McAllister's testimony to be credible and there was no apparent motive for him to fabricate a story.

This specification essentially charges the Respondent with failing to comply with an order given by Perez, specifically to complete a summons avoidance form. I find it highly unlikely that the Respondent was ever directed to complete that particular form. Rather, this Court believes that it was a command discipline form that the Respondent was directed to prepare, a form that was undisputedly completed by the Respondent, in evidence as (RX A). It is important to note that notwithstanding Perez's testimony at trial, it was brought out that at his Official Department interview he responded to being



asked if he directed any corrective action be taken against Officer Ward by saying “Well, yes. I had instructed Oates to—a CD be issued to PO Ward.”

Because I do not find that the Respondent was ordered to prepare a summons avoidance form, he could not have disobeyed Perez’s directive to do so.

The Respondent is found Not Guilty of Specification No. 3.

The final charge against the Respondent under this case stems alleges that the Respondent spoke in a “loud tone” with the lieutenant and additionally, “walked out of the room while being addressed” by him. This event apparently occurred shortly after the event discussed in the preceding specification.

It is not in dispute that the Respondent asked to speak with Perez in private in the property room adjacent to the desk, nor is it disputed that they both entered into the room. In essence, Perez alleged that the Respondent escalated his voice and thus, was discourteous to him. On the other hand, the Respondent denied that he spoke with a loud tone and claimed that it was Perez who yelled at him during the conversation. It is worth noting that just prior to Perez and the Respondent going into the property room, McAllister testified that Perez was “more abrasive than anything,” and said he heard “two loud voices” emanating from the property room.

Perez claimed that he told the Respondent not to leave the property room so that they could finish the conversation. He told him that he was giving him a “[d]irect order. Don’t walk out of this room.” The Respondent’s testimony confirms that he was aware that he had been instructed not to leave the room. As the Respondent’s superior, Perez was well within his right to tell the Respondent not leave the room. The request was not

unlawful and the Respondent exercised poor judgment in not remaining in the room. He testified that he believed the conversation was getting out of hand and that Perez was threatening him, and thus, he felt he had to “remove [himself] from a hostile situation.”

The Respondent is also charged with speaking in a “loud tone” with Perez during their conversation. There is differing testimony from both Perez and the Respondent on this issue. Perez claimed that the Respondent said to him, “I’m tired of this shit, and you are picking on me” in a loud voice. He felt that the Respondent was being discourteous in using this tone of voice with him. In contrast, the Respondent claimed that it was Perez who was agitated and raised his voice. He also said that Perez told him to lower his voice, to which he replied, “Me lower my voice? You lower your voice. You are the one yelling.” The Respondent admitted that, “When I rehash that day, sometimes, you know, I felt I was being picked on, emotions come up, and maybe so that day also.” On cross-examination, the Respondent admitted that “[Perez’s] voice got loud, maybe my voice got loud so he could hear me.” In addition, McAllister confirmed that he heard “two loud voices” coming from the property room.

This Court is mindful of the fact that the Respondent and Perez seem to have had a poor relationship. Notwithstanding this, however, this Department is a paramilitary organization and its members are expected to comport their behavior accordingly and conduct themselves in a professional fashion at all times. This is especially true in interactions with supervisors. To that end, this Court finds that the Respondent used a loud tone with Perez. The issue here is not whether Perez used a loud tone of voice; although it is likely he did, the Respondent is subordinate to him and thus, must be cognizant of his conduct. Instead of electing to match Perez’s tone of voice, it would

have been more appropriate for the Respondent to listen to what his superior officer had to say.

Accordingly, the Respondent is found Guilty of Specification No. 4.

Disciplinary Case No. 84360/08

The four charges in this case stem from complaints made by four separate individuals: Police Officer Nancy Ortiz, Police Officer Marjorie Denis, Police Administrative Aide Doreen Lopez-Rodriguez and Police Officer Nigeria Browne-Forde.

Under Specification No.1, the Respondent is charged with making “inappropriate comments of a sexual nature” to Ortiz and “inappropriately touched” her. Under Specification No. 2, the Respondent is charged with making “inappropriate comments” to Denis and “repeatedly asked [her] out on a date.” Under Specification No.3, the Respondent is charged with making “inappropriate comments of a sexual nature” to Brown-Forde.<sup>5</sup> Under Specification No.4, the Respondent is charged with making “inappropriate comments of a sexual nature” to Lopez-Rodriguez and asked her “out on a date and blew her a kiss.”

The four complainants appeared and testified at trial. During their testimonies they each expressed, in a direct and forthright manner, the experiences they had with the Respondent.

Ortiz testified that at one point between May and July 2007 when she approached the Respondent to ask his permission to go buy lunch he stated to her “Shake what your momma gave you” referring to her “behind.” It was suggested that the Respondent may

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<sup>5</sup> It should be noted that Brown-Forde testified that the comments were not made directly to her but from a distance where she could clearly hear what he said.

have been singing the lyrics to a song but Ortiz testified that he was not singing at the time. Another time the Respondent grabbed her hands at the desk and remarked "You got big hands. What those hands could do" which she interpreted as having a sexual meaning referring to masturbation. On another occasion she stated that the Respondent "rubbed into" her body with his upper arm while she was going down a stairway and emitted a shivering-like sound "like he liked what he did." She acknowledged that the stairway was narrow and the Respondent is a big man, but denied that he accidentally "brushed" up against her especially since he "did the shivering" as he came into contact with her further indicating to her that "he felt good about what he did."

Ortiz stated that she never gave the Respondent permission to act that way towards her and his conduct affected her "really bad" and was "offensive" and made her feel "disgusting...like an animal he can play with me."

Denis testified that from January 2006 to July 2007, the Respondent asked her out on several dates. She stated that he would call the female locker room and when she would answer the phone the Respondent would ask her "When are we going on a date?" She indicated that he made repeated phone calls to the locker room asking for a date "at least five times." No one other than the Respondent called her on the locker room telephone and eventually she stopped answering the phone which was located "one locker away" from her locker.

At one point in the first 6 months of either 2006 or 2007, Denis stated that the Respondent confronted her in the property room about her not wanting to go out on a date with him. He told her "What is the matter with you? You don't want to go out on a date with me? I am not going to tell anybody. What is it, you don't like big black men?"

During this conversation, the door to the property room was closed and was the only way in or out. Denis said she was standing to the right of the door and the Respondent was directly in front of and over her. He was about an arm's length away and Denis said that he was "very intimidating." She emphasized the fact that the Respondent employed a "firm tone of voice" and used an official demeanor but never threatened her. She became nervous and afraid by his aggressive behavior and told the Respondent that she was seeing someone else. Moreover, the Respondent's behavior caused her to not only stop answering the phone in the locker room but also to begin entering the command by a different entrance to avoid him. Denis denied asking the Respondent out on a date or flirting with him or giving him her telephone number.

It is important to note that Denis' credibility is enhanced by the fact that she did not report the Respondent's action to the Department. The Department learned of her incidents with him only when they contacted her and asked her if she had anything that she wanted to tell them. Even then she was reluctant to report him but decided to reveal what he was doing because he made her feel uncomfortable.

Lopez-Rodriguez testified that shortly after she introduced herself to the Respondent, in October 2007, he approached her in her office and complimented her on the color of her eyes and told her how petite she was. He further told her that he was 290 pounds "and that [she] would not be able to handle him. He would crush [her]." Lopez-Rodriguez interpreted this comment to have a sexual meaning and felt degraded by it. She reported the Respondent to her supervisor, Senior Police Administrative Aide Multree, and told her that she wanted to give the Respondent "an opportunity to save

himself and to back off.” She recalled that the Respondent was in her office for about ten to 15 minutes when he made the remarks and left on his own.

The following day, Lopez-Rodriguez was alone in her office with the door open and the Respondent returned and asked her out on a date. He told her that he was not from Brooklyn and wanted her to show him around. She declined his offer telling him that she was not interested in him. The Respondent then said that he “didn’t want to miss the opportunity of being with [her].” She then told him that he was making her feel uncomfortable and to please leave. The Respondent did not heed this request and he reiterated his desire of “being with [her].” She asked him to leave again and he did.

Later that day, Lopez-Rodriguez’s supervisors were in her office discussing the Respondent. He returned and discussed “chart changes” with Lopez-Rodriguez’s supervisor. Lopez-Rodriguez said he was not in the office very long, and upon leaving, he “walked out [of] the hallway on the first desk by the door...where the senior principal couldn’t see him, and turns around in a boyish way and throws me a kiss.” She then told her supervisor what the Respondent did.

The Respondent, because of his conduct with Lopez-Rodriguez, was subsequently banned from the second floor of the command. In addition, she avoided having any contact with the Respondent and would call the command’s custodian before entering the command to see if the Respondent was present. She also used the back door to avoid seeing him.

The Respondent, in contrast, denied the allegations made by Ortiz, Denis, Brown-Ford and Lopez-Rodriguez. Along with his denials he attempted to discredit the

complainants by telling of incidents that they were involved in that were unrelated to this case.

For example, while he denied that he told Ortiz to “shake what your momma gave you” and “I like it like that” and commenting on her hands and rubbing up against her, he testified that Ortiz was not a well-liked police officer and that she was a trouble maker who “told” on other police officers to supervisors. He told of her arguing with another member in front of prisoners as to whether a complainant should be handcuffed. As a result of him telling them that there will be no fighting in front of prisoners he later learned that Ortiz made a complaint that she was threatened resulting in an official investigation.

Another incident he spoke of was when he had to assign Ortiz to a detail that “she wasn’t too happy” with. He stated that she was offended and wanted to make a complaint but he was unsure if she ever did. He also believed “in my heart” that she made a complaint against him to IAB for having knowledge that an officer was selling DVDs, but he had no proof.

With regard to Denis he stated that she was flirtatious and frequently made small talk with him and that she even commented on his size and invited him out for a drink which never transpired. He also claimed that she was actually the aggressor and grabbed his arm and said that she liked big black men. He never refused her advances and gave her his telephone number because “it is rare that a female comes on to me.” According to the Respondent, when Perez arrived at the command Denis then made it seem that it was the Respondent who was the aggressor. While he readily admitted that he is “the aggressor” with women, he denied that he was “in this situation.”

The Respondent stated that he and Brown-Forde were not “the best of friends.” He even implied that her allegations had something to do with her friendship with Denis and that many people at the command did not want to work with her because she “is a naïve person as far as the job is concerned,” and “her tactics and her articulation isn’t as good. A lot of people felt uncomfortable working with her.” He denied that he made the comment “If you had a big penis would you suck it,” that Brown-Forde alleged and did not recall anyone in the desk area making such a comment.

With regard to Lopez-Rodriguez, the Respondent seemed to give testimony that at the very least was contradictory. He admitted that he found her attractive and to complimenting her on the color of her eyes and that he was “free to hang out any time.” He stated that he subsequently learned from “Maria,” a co-worker, that Lopez-Rodriguez “said not so nice things about [him],” yet, he still asked her to “go out sometime,” and he claimed she replied, “Sure where do you want to go.” He then claimed that Lopez-Rodriguez told him that he came “on kind of strong.” He then admitted to telling her that he weighed 300 pounds and further admitted that he told her “If I was to give you a hug I would crush you” and that she laughed at the remark. And then he was shocked to learn that Lopez-Rodriguez filed an OEEA complaint against him.

The Respondent stated that Lopez-Rodriguez could not have used the back door to enter the command because it had an alarm on it and that she had to walk into the command through the front door.

In support of the complainant’s allegation it is important to note that the Respondent was called into the Captain’s office and told to “stay off the second floor” with the exception of conducting rollcall.



The Respondent also called witnesses to testify in his behalf. Their testimonies apparently were meant to further demean the credibility of the complainants.

Santiago testified that at one point she and the Respondent were working desk duties when Denis came to the desk and as she rubbed the Respondent's arm while he sat at the desk she told him "You don't call me. When are we going to hang out?" Santiago was about seven feet away from them at the time and she noted that the Respondent never told Denis to stop. Santiago never witnessed any other interaction between the two other than "just hello, how are you doing" and she did not see anything inappropriate occur between the two.

Santiago spoke of Ortiz and showed her dislike for her when she testified that Ortiz was no friend of hers and "wasn't someone that I wanted to work with." She stated that Ortiz was aggressive, condescending and often made complaints against other officers. Santiago said that she did not witness any interactions between Ortiz and the Respondent other than when she would receive her assignment at roll call. She also never saw any personal or inappropriate interaction between the two.

Garcia stated that she worked with the Respondent the entire time she was at the command. She recalled a phone call she had with Lopez-Rodriguez where Garcia told her that the Respondent was "a good guy" and Lopez-Rodriguez replied "that's not what I heard...I heard nothing but bad things."

Kearney worked with the Respondent and recalled that in 2005 Denis sat in the desk officer's seat and had her hand on the Respondent's shoulder and believed that she was flirting with him. She did not hear the Respondent tell Denis to stop. She also testified the female locker room at Transit District 12 has one telephone and that it

“hasn’t worked in a couple of years” and the last time she answered it, she could not hear the other party. She doubted that the phone worked from January to July of 2006, and indicated that she believed the phone stopped working in 2005. She pointed out, however, that she never personally made a call on that telephone, but answered calls on it, thereby making her overall knowledge of the telephone questionable to this Court.

Kearney stated that she worked with Ortiz on patrol on several occasions and characterized her as “very argumentative and condescending” and she would have “verbal loud altercations” with officers in front of civilians. Kearney stated that she heard through the “rumor mill” that Ortiz made several EEO complaints against people working at the command causing people to keep their distance from her. Kearney never observed any interaction between Ortiz and the Respondent and never saw him hold her hand.

Robinson testified that Denis approached her in the female locker room and told her that the Respondent was harassing her and asked if he was doing the same to Robinson. Robinson told her he was not but she claimed that Denis tried to convince her to make an EEO complaint against him and further told Robinson that the Respondent was a “horrible guy” and “to watch out for him.”

Robinson further stated that Denis told her that she did go out with the Respondent but “somehow the relationship changed” and Denis “was unhappy with him.” While Denis tried to convince her to make an EEO complaint against the Respondent, she denied that Denis wanted her to fabricate a complaint against the Respondent. Robinson never confirmed with the Respondent regarding dating Denis.

Anglin recalled the argument she had with Ortiz regarding the handcuffing of a complainant. The Respondent instructed them that it was unprofessional to argue in front of prisoners, but he did not issue them a command discipline. Anglin said that Ortiz spoke to someone above the Respondent, a lieutenant, because she did not like the way he handled the matter. Both of them received command disciplines months later. She never saw the Respondent interact with Ortiz and noted that "most people stayed from her."

This Court finds that the credibility of the complainants was not diminished by the Respondent's testimony, or by the testimony of witnesses who testified in his behalf. Each complainant had a different complaint which were similar in nature, complaint (inappropriate comments of a sexual nature and inappropriate touching), and their own credible reactions stemming from their complaints (uncomfortable, scared, offended, informed a supervisor and entered the command through a different location to avoid him). Moreover, even if the testimony by the Respondent's witnesses concerning friendly overtures by one or more of the complainants were true it does not mean that friendly overtures can be viewed as an invitation to be on the receiving end of inappropriate and aggressive sexual behavior by the Respondent. In addition, the Respondent, as a supervisor, should have taken a professional stance against such overtures and instructed the members against any outward and forward gestures made while on duty.

Accordingly, this Court finds the complainant's allegations credible and therefore finds the Respondent Guilty as charged.

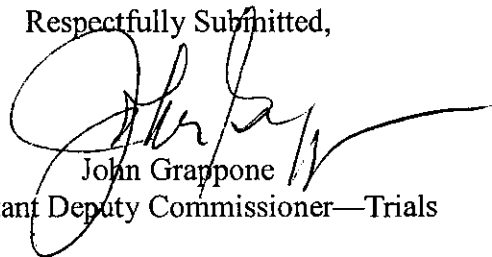
PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974). The Respondent was appointed to the Department on October 15, 1990.

The Respondent has been found Guilty of being disrespectful to Lieutenant Perez and making inappropriate comments of a sexual nature to four female members of the Department and inappropriately touching one female member and repeatedly asking another for a date. These findings of guilt are serious in nature because they not only show the Respondent's blatant disrespect for a superior officer they also show his equally blatant disrespect for the four female complainants in this case.

Accordingly, based on the foregoing and the Respondent's service record, I recommend that the Respondent be DISMISSED from the New York City Police Department, but that his dismissal be held in abeyance for a period of one year, pursuant to Section 14-115 (d) of the Administrative Code, during which time he remains on the force at the Police Commissioner's discretion and may be terminated at anytime without further proceedings. I further recommend that the Respondent forfeit 60 vacation days and attend the appropriate Equal Employment Opportunity counseling program.

Respectfully Submitted,



John Grappone  
Assistant Deputy Commissioner—Trials

**APPROVED**

DEC 08 2009



RAYMOND W. KELLY  
POLICE COMMISSIONER

**POLICE DEPARTMENT  
CITY OF NEW YORK**

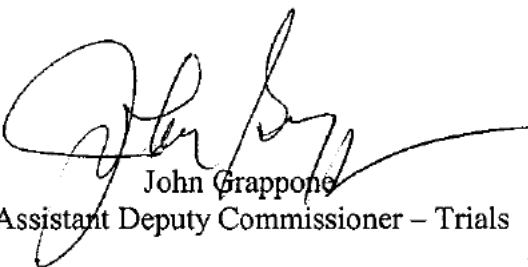
From: Assistant Deputy Commissioner - Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
SERGEANT CURTIS OATES  
TAX REGISTRY NO. 898193  
DISCIPLINARY CASE NOS.: 83752/08 & 84360/08

The Respondent received ratings of 3.0—"Competent," 3.5—between "Competent," and "Highly Competent," and 4.0—"Highly Competent" on his last three performance evaluations in 2006, 2007 and 2008. [REDACTED]

[REDACTED] He has one  
Excellent Police Duty medal.

The Respondent has a prior formal disciplinary history. In 1994, he was found guilty of wrongfully engaging in a physical altercation with another member of the service resulting in a suspension of 20 days. As a result of his overall record, the Respondent is currently on "Level II" disciplinary monitoring.

For your consideration.

  
John Grappone  
Assistant Deputy Commissioner - Trials